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No. 2450

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United States  
**Circuit Court of Appeals**  
For the Ninth Circuit

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NELLIE M. RININGER and HELEN DOROTHY  
RININGER, a Minor, by A. S. KERRY, her  
Guardian,

Plaintiffs in Error.

vs.

PUGET SOUND ELECTRIC RAILWAY, a Cor-  
poration, and PUGET SOUND TRACTION,  
LIGHT & POWER COMPANY, a Corporation,  
Defendants in Error.

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**Transcript of Record**

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Upon Writ of Error to the United States District  
Court for the Western District of Wash-  
ington, Northern Division

**Filed**

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JUL 25 1914

F. D. Monckton,

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Clerk.



No.

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*In the District Court of the United States for the  
Western District of Washington, Northern  
Division.*

No. 2568.

NELLIE M. RININGER and HELEN DOROTHY  
RININGER, a Minor, by A. S. KERRY, her  
Guardian,

Plaintiffs in Error,

vs.

PUGET SOUND ELECTRIC RAILWAY, a Cor-  
poration, and PUGET SOUND TRACTION,  
LIGHT & POWER COMPANY, a Corpora-  
tion,

Defendants in Error.

**Names and Addresses of Counsel.**

H. H. A. HASTINGS, Esq., Attorney for Plaintiffs  
in Error,

64 Haller Block, Seattle, Washington.

L. B. STEDMAN, Attorney for Plaintiffs in Error,  
64 Haller Block, Seattle, Washington.

JAMES B. HOWE, Esq., Attorney for Defendants  
in Error,

235 Pioneer Building, Seattle, Washington.

HUGH A. TAIT, Esq., Attorney for Defendants in  
Error.

235 Pioneer Building, Seattle, Washington.

*In the District Court of the United States for the  
Western District of Washington, Northern  
Division.*

No. 2568.

NELLIE M. RININGER and HELEN DOROTHY  
RININGER, a Minor, by A. S. KERRY, Her  
Guardian,

Plaintiffs,

vs.

PUGET SOUND ELECTRIC RAILWAY, a Cor-  
poration, and PUGET SOUND TRACTION,  
LIGHT & POWER COMPANY, a Corpora-  
tion,

Defendants.

**Amended Complaint.**

Come now the above named plaintiffs, and, pur-  
suant to the order of this Court, file this their  
amended complaint, and, for cause of action against  
the above named defendants, complain and allege:

I.

That Helen Dorothy Rininger is a minor of the  
age of thirteen years residing in King County,  
Washington, and that A. S. Kerry is her duly ap-  
pointed and qualified guardian, having been so ap-  
pointed by the Superior Court of King County,  
Washington.

II.

That at all the times herein mentioned, the  
Puget Sound Electric Railway and the Puget Sound  
Traction, Light & Power Company were, and still  
are, corporations organized and existing under the

laws of the State of Washington, and own and maintain and are engaged in operating an electric passenger railway and its equipment between the Cities of Seattle and Tacoma, in the State of Washington.

### III.

That there is an improved macadamized public highway and thoroughfare which crosses the tracks and road-bed of the defendants at Riverton about two miles south of Seattle, in King County, Washington; that at said highway crossing, said tracks run generally in a Northerly and Southerly direction, and that for about 2,000 feet, or more, North of said crossing and West of and adjacent and near to said tracks is a high, steep and continuous bluff, and that from a point about forty feet North of said highway crossing and for a distance of 800 or 900 feet from said point, the exact distance of which is not now known to these plaintiffs, defendants have excavated Westward and into said bluff and bank so that at a point 40 feet from said crossing the tracks and road-bed of defendants curve Westward and into said bank for several feet, which curve extends from the Westward toward said railway crossing on a descending grade of two or three per cent., and after it intersects said electric railway tracks it then turns abruptly Northward towards and leads into the City of Seattle; that the Duwamish River flows along and Eastward of said highway at and Northward from said railway crossing.

### IV.

That said railroad bed and tracks were con-

structed and were and are operated and maintained in a careless and negligent manner in this: that defendants failed to excavate or remove an embankment of earth that extends and did extend on July 25, 1912, along the West side of said road-bed or right of way from a point 30 feet North of said highway crossing and extending continuously Northward and on a Westward curve for a distance of 800 or 900 feet, which embankment is sufficiently high that it completely obscures the vision and sight of persons approaching said railway crossing from the Westward on said highway, preventing them from seeing said railway tracks for about 1,000 feet North of said crossing; that said embankment could easily have been removed at small expense and when so removed there would then have been a clear view and vision to persons approaching said crossing from the Westward for a distance of 100 feet before reaching the same Northward over and across said tracks for a distance of 2,000 feet, so that persons proceeding Eastward upon said highway, and when within 100 feet of said crossing, could have readily seen an approaching car or train at any point within 2,000 feet Northerly from said crossing, which would give such persons ample time and opportunity to avoid being injured by approaching trains.

V.

That on July 25, 1912, between the hours of 4 o'clock and 5 o'clock in the afternoon, Edmund M. Rininger, the then husband of the plaintiff, Nellie M. Rininger, and father of the plaintiff, Helen Dor-

othy Rininger, was proceeding along said highway in a Northerly direction, riding in his own automobile, which automobile was operated by an employe of said Edmund M. Rininger, who was a skillful and careful and competent chauffeur, and as said parties reached the descending grade leading to said crossing at a point approximately 500 feet Westward from said crossing, they were proceeding at a speed of less than 20 miles per hour; that at said point the operator of said automobile shut off the engine that propelled said automobile and applied the brakes to the wheels thereof sufficiently to materially slacken its speed; that from said point above mentioned of about 500 feet Westward from said crossing said automobile coasted toward said crossing under complete control of said operator and at a reasonable rate of speed; that said highway from said crossing Westward for several miles was macadamized, and the wheels of said automobile were covered with pneumatic tires, and the engine of said automobile was at said time noiseless, not being operated, and that when said parties were within a reasonable distance Westward from said crossing, to-wit, 50 feet, both said Edmund M. Rininger and said operator of said automobile—being then in full possession of their senses of hearing and seeing and while proceeding at a slow rate of speed in said automobile to-wit, at about 12 miles per hour, which rate of speed was continued until they reached the crossing—listened and looked both Southward and Northward to ascertain if any cars or trains were ap-

proaching said crossing on said railway; that neither of them could hear any aproaching car or trains on said tracks, and did not, and could not, see any cars or trains approaching from the North toward said crossing; that said parties could as easily have seen or heard an approaching car or train coming from the North on said tracks toward said crossing while so riding in said moving automobile, under the conditions as hereinabove described, as they could had they brought the automobile to a stand-still; that the manner in which said parties approached said railway crossing was reasonable, prudent and cautious and the methods and precaution that they adopted to ascertain if any cars or trains were aproaching said crossing on said railway in either direction were reasonable, prudent and cautious; that when said parties in said automobile had reached within 20 feet of said crossing, they discovered for the first time an electric car aproaching said crossing from the Northward, emerging from said curve at an excessively high and dangerous rate of speed, to-wit, 40 miles per hour; that the operators of said electric car had failed to sound the whistle or give any other warning of the approach of said car; that when said parties first discovered said aproaching car, it was within 30 feet of said crossing; that the operator of said automobile then immediately applied the brakes to the wheels of said automobile and brought the same to a stop just as it reached the crossing; that the operators and motormen on said electric car did not slacken the high

and dangerous speed of said car as it approached said crossing; that said electric car collided with said automobile and with such force as to throw said Edmund M. Rininger out of it and against and under said electric car, where and at which time he was instantly killed.

## VI.

That said highway was and is the principal thoroughfare from the South into the City of Seattle, and is a part of the Pacific highway, and was at said time much frequented and constantly used by the traveling public, and that said highway and railway crossing was then and had been for several years a dangerous crossing.

## VII.

That prior to July 25, 1912, the dangerous character and conditions of said crossing were then well known to the defendants, and to their officers, agents and employees; that defendants did not, on July 26, 1912, keep or maintain any guard at said highway crossing to give warning to the public or to parties about to cross said tracks of the approach of cars or trains on said tracks.

## VIII.

That at the time said Edmund M. Rininger was killed both he and the operator of said automobile were free from carelessness and negligence.

## IX.

That the injuries and acts causing the death of said Edmund M. Rininger were wholly and entirely due to, and caused by, the carelessness and negli-

gence of the defendants in this: in the failure of defendants to excavate and remove the embankment of earth from the West side of the road-bed of defendants and North of the aforesaid highway and railway crossing, which embankment prevented persons approaching said crossing from the West from seeing or hearing approaching cars or trains on said tracks from the North; also in operating and running their cars and trains at, or approaching, that point at a rate of speed about 20 miles per hour, and particularly at any rate in excess of 30 miles per hour; and in failing to keep and maintain a watchman at said crossing to give reasonable warning to persons upon said highway about to cross said tracks of the approach of trains and cars thereon; that the dangerous conditions of said crossing were then well known to defendants; that said electric car was operated in a careless and negligent manner in this: that same was run at said point at an excessive and dangerous rate of speed to-wit, 40 miles an hour, and that the motorman thereon gave no warning by sounding of the whistle or otherwise of the approach of said car.

## X.

That said Edmund M. Rininger was, at the time of his death, of the age of forty-two years; was in sound health and in complete possession of all of his faculties; was an exceptionally skilled and successful surgeon and physician with a large and lucrative surgical and medical practice in Seattle and the Pacific Northwest, and was earning in his

practice and business from \$60,000 to \$75,000 per annum.

XI.

That said Edmund M. Rininger was the sole support of the plaintiffs herein.

XII.

That plaintiffs have been damaged by the negligent acts and conduct of the defendants in causing the death of said Edmund M. Rininger, thereby depriving them of their means of support, in the sum of \$300,000, no part of which has been paid.

Wherefore, plaintiffs pray for judgment against defendants, and each of them, in the sum of \$300,000, together with their costs and disbursements.

HASTINGS & STEDMAN,  
*Attorneys for Plaintiffs.*

State of Washington,  
County of King.—ss.

Nellie M. Rininger, being first duly sworn, on her oath deposes and says:

That she is one of the plaintiffs in the above entitled cause; that she makes this verification for and on behalf of said plaintiffs; that she has read the foregoing complaint, knows the contents thereof, and believes the same to be true.

NELLIE M. RININGER.

Subscribed and sworn to before me this 15th day of October, A. D. 1913.

H. H. A. HASTINGS,  
Notary Public in and for the State of Washington,  
residing at Seattle.

Service of the within Amended Complaint by delivery of a copy to the undersigned is hereby acknowledged this 15th day of October, 1913.

JAMES B. HOWE,  
HUGH A. TAIT,  
Attorneys for Defendant.

Indorsed: Amended Complaint. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Oct. 15, 1913. Frank L. Crosby, Clerk. By E. M. L. Deputy.

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*In the District Court of the United States for the Western District of Washington, Northern Division.*

No. 2568.  
NELLIE M. RININGER and HELEN DOROTHY RININGER, a Minor, by A. S. Kerry, Her Guardian,

Plaintiffs.

vs.

PUGET SOUND ELECTRIC RAILWAY, a Corporation, and PUGET SOUND TRACTION, LIGHT & POWER COMPANY, a Corporation,  
Defendants.

**Separate Answer of Puget Sound Electric Railway.**

Comes now the defendant Puget Sound Electric Railway and for its separate answer to the amended complaint of the plaintiffs in the above entitled action, admits, denies and alleges as follows:

I.

This defendant denies any knowledge or infor-

mation sufficient to form a belief as to any of the allegations contained in paragraph one of said amended complaint.

## II.

This defendant denies each and every allegation contained in paragraph two of said amended complaint, except that this defendant admits that it owns and maintains and is engaged in operating an electric passenger railway and its equipment between the cities of Seattle and Tacoma, in the State of Washington.

## III.

This defendant denies each and every allegation contained in paragraph three of said amended complaint, except that this defendant admits that there is a public highway and thoroughfare which crosses the tracks and roadbed of this defendant at Riverton, in King County, Washington, and except that this defendant admits that at said highway crossing said tracks run generally in a northerly and southerly direction, and except that this defendant admits that north of said crossing and west of and adjacent and near to said tracks is a high, steep and continuous bluff, and except that this defendant admits that said highway extends from the westward toward said railway crossing on a descending grade and after it intersects said electric railway tracks it then turns northward towards and leads into the City of Seattle, and except that this defendant admits that the Duwamish River flows along and east-

ward of said highway at and northward from said railway crossing.

#### IV.

This defendant denies each and every allegation contained in paragraph four of said amended complaint.

#### V.

This defendant denies each and every allegation contained in paragraph five of said amended complaint, except that this defendant admits that on July 25, 1912, in the afternoon, Edmund M. Rininger, the then husband of the plaintiff Nellie M. Rininger and father of the plaintiff Helen Dorothy Rininger, was proceeding along said highway, riding in his own automobile, which automobile was operated by an employe of said Edmund M. Rininger, and except that this defendant admits that both said Edmund M. Rininger and said operator of said automobile were then in full possession of their senses of hearing and seeing, and except that this defendant admits that one of its electric cars and said automobile collided, as the result of which collision said Edmund M. Rininger was then and there killed.

#### VI.

This defendant denies each and every allegation contained in paragraph six of said amended complaint, except that this defendant admits that said highway was and is a thoroughfare from the south into the City of Seattle and was at said times used by the travelling public.

VII.

This defendant denies each and every allegation contained in paragraph seven of said amended complaint.

VIII.

This defendant denies each and every allegation contained in paragraph eight of said amended complaint.

IX.

This defendant denies each and every allegation contained in paragraph nine of said amended complaint.

X.

Referring to paragraph ten of said amended complaint, this defendant denies any knowledge or information sufficient to form a belief as to whether or not said Edmund M. Rininger was, at the time of his death, of the age of forty-two years, or as to whether or not he was in sound health or in complete possession of all of his faculties; and this defendant denies each and every other allegation in said paragraph contained.

XI.

Referring to paragraph eleven of said amended complaint, this defendant denies any knowledge or information sufficient to form a belief as to any of the allegations therein contained.

XII.

This defendant denies each and every allegation contained in paragraph twelve of said amended complaint, except that this defendant admits that no

part of the sum of three hundred thousand dollars (\$300,000) therein referred to has been paid, and denies that the plaintiffs, or either of them, have been damaged in the sum of three hundred thousand dollars (\$300,000), or in any other sum or amount whatsoever, or at all.

Further answering, and as a further, separate and affirmative defense, this defendant alleges:

I.

That all the physical injuries sustained by said Edmund M. Rininger, deceased, and all the injuries and damages sustained by the plaintiffs, or either of them, and which are set forth and alleged in their amended complaint, if any injuries or damages said plaintiffs, or either of them, have sustained, occurred and were caused by the fault, carelessness and negligence of said Edmund M. Rininger, deceased, and the fault, carelessness and negligence of his servant and chauffeur, and the said fault, carelessness and negligence of said Edmund M. Rininger, deceased, and of his said servant and chauffeur contributed thereto and were the proximate cause thereof.

Wherefore, having fully answered, this defendant prays that this action be dismissed; that it go hence without day, and have and recover of and from the plaintiffs its costs of suit herein.

JAMES B. HOWE,  
HUGH A TAIT,

Attorneys for Defendant Puget Sound Electric Rail-way.

State of Washington,  
County of Pierce.—ss.

Louis H. Bean, being duly sworn, on oath deposes and says that he is the Managing Agent of Puget Sound Electric Railway, a corporation, one of the defendants in the above entitled action; that affiant has read the foregoing answer, knows the contents thereof, and believes the same to be true; that he makes this verification because said defendant is a corporation and affiant is its Managing Agent.

LOUIS H. BEAN.

Subscribed and sworn to before me this 21st day of October, 1913.

WINIFRED FISH.

Notary Public in and for the State of Washington,  
residing at Tacoma, in said state.

(Notarial Seal)

Copy of within Answer received this 21st day of October, 1913.

HASTINGS & STEDMAN,  
Attorneys for Plaintiff.

Indorsed: Separate Answer of Puget Sound Electric Railway. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Oct. 21, 1913. Frank L. Crosby, Clerk. By E. M. L., Deputy.

*In the District Court of the United States for the  
Western District of Washington, Northern  
Division.*

No. 2568.

NELLIE M. RININGER and HELEN DOROTHY  
RININGER, a Minor, by A. S. KERRY, Her  
Guardian.

Plaintiffs,

vs.

PUGET SOUND ELECTRIC RAILWAY, a Cor-  
poration, and PUGET SOUND TRACTION,  
LIGHT & POWER COMPANY, a Corporation,  
Defendants.

**Reply to Affirmative Defense.**

Come now the plaintiffs in the above entitled cause and for reply to the affirmative defense of the Puget Sound Electric Railway, allege:

I.

Replying to each and all of the allegations and averments of the first paragraph of said affirmative defense, these plaintiffs deny each, every and all of said allegations.

Wherefore these plaintiffs pray for judgment as asked for in the amended complaint.

HASTINGS & STEDMAN.

Attorneys for the Plaintiffs.

State of Washington,  
County of King.—ss.

Nellie M. Rininger, being first duly sworn on oath, deposes and says: that she is one of the plain-

tiffs in the above entitled cause, that she has read the foregoing reply, knows the contents thereof and believes the same to be true.

NELLIE M. RININGER.

Sworn to before me and subscribed in my presence this 25th day of October, 1913.

(Seal) H. H. A. HASTINGS,  
Notary Public in and for the State of Washington,  
residing at Seattle.

Copy of within Reply received and due service of same acknowledged this 27th day of October, 1913.

JAMES B. HOWE,  
HUGH A. TAIT,  
Attorneys for Defendant, Puget Sound Elec. Ry.

Indorsed: Reply to Affirmative Defense. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Oct. 27, 1913. Frank L. Crosby, Clerk. B. O. W., Deputy.

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*In the District Court of the United States for the  
Western District of Washington, Northern  
Division.*

No. 2568.

NELLIE M. RININGER, et al.,

Plaintiffs,

VS.

PUGET SOUND ELECTRIC RAILWAY, a Corporation, and PUGET SOUND TRACTION, LIGHT & POWER COMPANY, a Corporation, Defendants.

**Trial.****Empaneling of Jury.**

Now on this day this cause comes on regularly for trial in open Court, the Plaintiff being represented by Messrs. Hastings & Stedman, and the Defendants represented by Hugh A. Tait, a jury being called come and answer to their names as follows: Hugh Allen, James McEvily, J. E. Guindon, R. T. Noyes, C. I. Chamberlain, Carl F. Nelson, C. H. Hicks, Chas. Gardner, O. D. Joanis, John F. Cronen, Abbie McKilligan and James M. Baily, twelve good and lawful men duly empaneled and sworn, the trial proceeds by statement of counsel to jury.

And now the hour of adjournment having arrived, by consent of parties it is ordered by the Court that this cause be, and is hereby continued until Friday, February 13, 1914, at 10:00 a. m., and the Court having cautioned the jury they are allowed to separate until that hour.

Dated Wednesday, February 11, 1914.

Journal 3, Page 448.

*In the District Court of the United States for the Western District of Washington, Northern Division.*

No. 2568.

NELLIE M. RININGER and HELEN DOROTHY RININGER, a Minor, by A. S. KERRY, Her Guardian,

Plaintiffs,

vs.

PUGET SOUND ELECTRIC RAILWAY, a Corporation, and PUGET SOUND TRACTION, LIGHT & POWER COMPANY, a Corporation,  
Defendants.

**Plaintiffs' Draft of Proposed Bill of Exceptions.**

Be it remembered that this cause came on regularly for hearing on February 11, 1914, before the Hon. E. E. Cushman, judge presiding, plaintiffs appearing by their counsel, Hastings & Stedman, and defendants appearing by their counsel, J. B. Howe and Hugh A. Tait. The following proceedings were then had. A jury was empaneled and sworn according to law, and thereupon plaintiffs, to sustain the issues upon their part, offered the following testimony as their evidence in chief:

**Testimony of Walter P. Miller, Witness for Plaintiff.**

“My name is Walter P. Miller. I am a photographer, having followed that occupation for the last 15 or 16 years, and was such in July and August, 1912. On August 8, 1912, I took some photograph views of the locality at what is known as the River-

ton Crossing, where the county highway crosses the tracks of the Puget Sound Electric Railway Company, and Mr. Brodnix, the chauffeur who was driving the machine at the time of the Rininger accident, was with me." (Witness was shown a photograph.) "I took this photograph, and it is a correct representation of the conditions as shown thereon. At the time this picture was taken the camera which took it was in the center of the road about 200 feet West of the Interurban tracks at the Riverton Crossing." (This photograph was identified as Exhibit No. 1.) (Witness was shown another photograph.) "I took this photograph which correctly shows the condition that appears thereon, and it is a correct representation of the objects which are shown therein." (This photograph marked for identification, Plaintiffs' Exhibit No. 2.) "At the time this picture was taken, the camera that took it was about 20 feet West of the Interurban track, and shows the locality looking in a Northerly or Northwesterly direction from the camera. These photographs were taken August 8, 1912." Mr. Hastings: "I suppose we will have to supplement this with some additional proof to show that the conditions on the 8th of August were the same as on the date of the accident." Mr. Tait: "I have no objection to these pictures. I think they are correct representations." Thereupon plaintiffs' exhibits 1 and 2 were offered and received in evidence. Witness continued: "Again referring to Exhibit 2, it purports to show the Interurban crossing of the road at Riverton and

shows the tracks of the defendant looking North, I think, and near the front part of the picture appears a post with a sign on top of it. It has a railroad crossing sign with lights and the bell on it. This bell gives an alarm that rings if a train was passing." The photographs were then submitted to the jury for examination, it having been agreed that the photographer might write on the back of each the point where he took them, because it would be difficult to remember the exact location of each. Thereupon another photograph was shown to the witness, and he continued: "This is one of the pictures which I took on the same date and is a correct representation of what it purports to show. At the time it was taken the camera was in the center of the road about 40 feet West of the Interurban track and pointing East." Thereupon this photograph was marked "Plaintiffs' Exhibit No. 3," and received in evidence without objection. It was thereupon agreed that the several photographs, about to be offered by plaintiffs, shall be received in evidence without objection except that the witness on the stand should state the points from which they were taken, and to make endorsements on the back of each to show such location. Thereupon another photograph was shown to the witness, whose testimony continued as follows: "This is one of a series which I took at that time and the camera was situated 10 feet from the track looking in a Northeasterly direction." Thereupon this photograph was received in evidence without objection as "Plaintiffs' Exhibit No. 4," and

another photograph was shown to the witness, who testified as follows: "This is another one of the photographs taken at the same time and the camera was 20 feet from the track looking in a Northeasterly direction." This photograph received in evidence without objection, marked 'Plaintiffs' Exhibit No. 5," and another photograph shown to the witness, who testified as follows: "This is another photograph taken by me at the time, and the camera was situated 30 feet from the track looking in a North-easterly direction." This photograph was received in evidence without objection, marked "Plaintiffs' Exhibit No. 6," and another photograph was shown to the witness, who testified: "This is another photograph taken by me at the time and the camera was situated 50 feet from the track looking in a Northeasterly direction." This photograph received in evidence without objection and marked "Plaintiffs' Exhibit No. 7," and another photograph shown to the witness who testified: "This is another photograph taken by me at the same time and the camera was situated 60 feet from the track looking in a Northeasterly direction." This photograph was received in evidence without objection, marked "Plaintiffs' Exhibit No. 8," and another photograph shown to the witness who testified: "This is another photograph taken by me at the same time, and the camera was situated 60 feet from the track looking more in an Easterly direction. All of these photographs correctly show the conditions that appear thereon." This last photograph received in evidence

without objection, marked "Plaintiffs' Exhibit No. 9."

Cross-Examination.

"In describing the different distances from the track that my camera was standing at the time these photographs were taken, I refer to the Westerly or South bound track and the West rail of the West track, there being a double track at that crossing, and the distances given by me are from the West rail of the West track, and the West track over which the trains from Seattle to Tacoma pass."

**Albro Gardner, Jr., Witness for Plaintiffs.**

"My name is Albro Gardner, Jr. Am a civil engineer, which occupation I have followed since 1893, and am practicing my profession in Seattle, where I have resided since 1883. I am familiar with the locality known as the Riverton Crossing, where the public highway crosses the tracks of the defendant, Puget Sound Electric Railway Company, out South of the City of Seattle, being as familiar therewith as one would be, traveling backwards and forwards very often, and have been familiar with the locality since 1903. I have recently made a plat or drawing of the locality, which plat is a survey that we made showing the location of the crossing on January 12, 1914, about a month ago, and this plat correctly shows the location of the tracks of the Puget Sound Electric Railway Company as it crosses the highway at Riverton, and also shows the location of the several objects that appear thereon, and so far as I am

able to observe the conditions surrounding this crossing in January, 1914, were similar to what they were in July, 1912. There were two of us who did the work of making the actual measurements on the ground, and I was doing part of it and I participated in the preparation of this drawing." (Drawing or plat received in evidence without exception and marked "Plaintiffs' Exhibit No. 10.") Mr. Tait: "You made the drawing from the notes which you took yourself on the ground?" "A. Yes, sir. Q. You actually made this drawing from your own notes? A. Yes." Continuing his direct examination, witness states: "The general direction of the tracks on this map are practically North and South. There is an arrow marked on Exhibit 10 which indicates the directions, and this arrow points North and South." (Witness marks the points of the compass with a red pencil on the map.) "The reddish shade in the middle of the road indicates the part of the county road that is macadamized and this macadam extends South of the crossing, and I think it goes to Renton Junction in that direction somewhere, and I have been familiar with this highway since 1903, and it is the main thoroughfare leading out from the South part of the City of Seattle. I know about the volume of traffic that passes over it and did during the month of July, 1912, and it carries a lot of traffic because most everything that goes between here and Tacoma or in the Valley travels this road. I refer to the Duwamish Valley between here and Tacoma. There are several towns in the Valley.

There is a small settlement to the Southwest of that locality called Riverton, and there are other settlements farther South. Tukwila first, and Renton, Kent and Auburn farther South. There is practically no other thoroughfare leading South from the city that passes out through that territory through this Valley. The elevations of different objects and portions of the territory are shown on this map. We assume as datum an elevation at the crossing of the county road and the Puget Sound Electric Railway Company's track as 100 feet and run everything to that. On the map along the highway is a place marked "store and platform," which is Southwest from the crossing. The ground breaks off to the South of the county road and the platform is open underneath, but the basement is under the store. At a point about 50 feet West of the West rail along the center of the road, it is about two feet higher than the track. This map is drawn to a scale of one inch to 30 feet. We took another elevation which is farther West, and this is 12.1 feet above the track. This point is about 300 feet West of the track giving about a 4 per cent grade, and makes an average of a 4 per cent grade on the highway. It is practically a continuous grade from the store to the crossing. It is a little steeper just before you get there, but it is a water-bound macadam and the grade is not as even as the newer macadam roads now made. The macadamized portion of the road at that point is from 13 to 14 feet wide. On this map appears the word "plat-form" on the tracks a

little North of the highway. This is a plat-form upon which the passengers alight from the South-bound car. There are no buildings or anything else there besides this plat-form. On the map we have marked "alarm bell," which is an iron post there with a gong and a danger signal on it. This gong is operated from the third rail just about 1220 feet North of the crossing, and the shoe on the out-bound cars will hit the third rail and start the gong to ringing. Out-bound cars go in a South direction. I will mark on the map, this appliance that sets the gong in motion, with a letter 'A' in red, which point is 1220 feet North of the gong. This appliance also manipulates a series of lights on the same post—small incandescent colored lights, which can be seen when lighted. I think these lights are operated by the same switch and device that operates the gong. This post carrying this gong is about 17 feet from the macadam portion of the highway, and I do not know whether a traveler passing over the highway toward the crossing could see it or not until he got fairly close to it. There is a line running North along the West side of the tracks which indicates a fence and the balance the top of a steep bank. I will describe the conditions West of the track or a distance of 1,200 feet North of the highway crossing. Starting in at the point 'B' it is practically on the level with the county road. The fence is about 5 feet high. I think it shows on the picture. I only show it part of the way up the hill. There is a road just to the West of that which goes to the Northwest

and at a point about 50 feet from the green fence it is 18.6 feet above the track. At a point 120 feet it is 20.8 feet." Question by juror: "What is this that is above the track that he is speaking of?" A. "This is the top of the steep bank caused by the excavation of the right of way for the car-line."

Continuing, the witness states: "The steep bank is on the left hand side going North, the right hand side going out. I might explain here, this is the county road, and here is the crossing at Riverton where the accident happened, and this is the platform for the people to get on coming in. The letter 'P' is the platform for the people to get on and off on the Northbound cars. The letter 'Q' is the platform for the people to get on and off on the southbound cars. The portion colored in red is the water-bound macadam road, and the portion marked 'plank roadway' is the continuation of the county road to the river and bridge, and it extends a little North to the graveled road, which extends along the East side of the electric tracks. At the point marked 'X,' the main thoroughfare crosses the bridge and goes to the East side of the Duwamish River and East on into town. This to the North shown in red is a graveled road and only a local proposition. That does not lead directly into the city. The plank roadway is the ordinary county plank road and bridge on some kind of frame work. I did not examine whether it was piles or post. I think a portion of the West edge is over on the ground, but the East edge is up in the air because it is near the river.

There is a board fence made out of 1x12 boards spiked to some kind of railing close together between the plank roadway and the tracks of the interurban. These bards are perpendicular and make a tight fence about 5 feet high. A part of the county road and the tracks are practically on a level and then just to the West of it is a steep bank extending very steep like this, all along here. It goes to nothing at the point marked 'B.' At the point marked 'C' it is about 440 feet North of 'B.' The top of the bank at this point is 44 feet high above the car tracks and continues along with a decreasing height as it goes North. The East end of the platform where it is marked on the plat 'store and platform' is about 60 feet from the West rail of the West track. The river bank opposite the crossing is about 100 feet from the macadamized road just on the curve, and as you go North where the two start to parallel they are from 40 to 45 feet. There appears on the map and drawing right North of the highway and across the track at a point where I now mark with the letter 'D' what is called the cattle guard or cow-catcher. This cattle-guard represented by the letter 'D' North of the macadamized road is about 25 feet. There is also a cattle-guard on the South side about 30 feet." Q. "I will ask you to state what effect, if any, does this bank between the point marked '120 feet' and the point marked 'B' have upon a view of the tracks of the defendant North of the crossing?" A. "Well, including the fence, which is a 1x6 board fence about 5½ feet

high and the bank and the ferns and weeds that grow in there, it practically obstructs it for that height. \* \* \* The height, right at the crown, would be as high as a man's head, and then as you go farther here, at a point about 70 feet from 'B' along the fence Northeasterly it would be about 18—about 24 feet above the track—the top of the fence. When I was out there surveying in January, I made observations respecting the Southbound cars of the defendant on the West track. While we were there working there were a number of them passed through. We noted the height that a man would be. We noted the men's heads in a couple of automboiles as they passed by and we wanted to take some pictures, so we got a focus from the store and stood in the street here and our heads were just about the height of the men's heads in the automobiles, so then we took our pictures and observations from a point marked 'M.' Now from 'M' when a car is coming along the West track after it passes the point marked 'T,' it practically disappears from view until it comes nearly to the platform marked 'Q.' The point 'M' is about 90 feet from the West rail of the West track, and as you stand here at the point 'M' you will see the car as it is coming along on the West track South-bound until it comes to about 'T,' and then at 'T' are these poles along here, and the fence and the banks obstruct the car and you won't see it again until it is in here again right close. While we were observing this action, we took some photographs of an approaching train. These

are the two photographs which we took at that point on January 12, 1914. On that day it was raining a little bit, and for that reason the pictures were not as clear as they would have been on a clear day. These photographs were taken at a point just West of the platform at the point marked 'M' on the plat and the camera was 5 or  $5\frac{1}{2}$  feet above the ground which was about the height that a man's head would be in riding in an automobile. At the time these photographs were taken, the car had passed the Allen-Town platform." Thereupon, the two photographs identified by the witness were received in evidence without objection, marked "Plaintiffs' Exhibits 11 and 12."

#### Cross-Examination.

"Referring to the two photographs, 'Plaintiffs' Exhibits 11 and 12,' I did not snap the camera which belongs to our firm. At the time the pictures were taken, the cars were running along the Southbound track. Just the front of the car shows in the picture. It is just disappearing right there (showing). Am looking at Exhibit 11. The train is opposite the pole 5, which would be on the other track. This is pole 5, and the car was right there." Q. "But you cannot see that in the photograph owing to the fact that the day was a dark, cloudy, rainy day, is that the reason?" A. "No, sir. It is not. If you will notice that is the one where it is just disappearing behind that pole." Q. "In this photograph, exhibit 11, when that picture was taken, could you see any part of the approaching car?" A. "No, sir, it

was just disappearing." (Continuing.) "I knew where the car was when we took the picture because I had one of the men go up here and mark exactly when we held up our hands where we wanted the photograph taken. Here he marked where the car was. This was pole 5 and the other is at this point marked 'T.' Exhibit 12 shows the car at point 'T.' and it is about 48 feet from the point 5 to the point 'T.' If it had been a clear day and the sun bright, you could have seen the car shown in pictures 11 and 12, but indistinctly. Where it is North of pole 5, you see a little shade down there behind just disappearing behind the pole. If it had been a clear day, the car would not have been more distinct in Exhibit 12 than it is in 11, because it hadn't disappeared yet. In taking Exhibit 12, the photographer had he happened to be standing at the place where this picture was taken, could have seen the train just as it was disappearing. It so shows in the picture. The camera was standing at the point marked 'M' at the time both pictures were taken, and this point 'M' is 90 feet West from the West rail of the Southbound track in the center of the road. I never measured the height of an ordinary interurban passenger car, and do not know its height." Q. "Did you make any other observation to ascertain the greatest distance West from the Southbound track that a person could stand and see a Southbound car coming all the way from Allentown down to this crossing?" A. "Well, I can explain it this way. I walked clear up to the point marked 'J' and I watched or looked for

a car down toward the Allentown bridge, which is at the point marked 'X.' I don't think I noticed a car when I was at this point, but when we got farther East along the road you might see one in here, but as soon as it passes along behind the big bluff then it goes in a pocket and you don't see it as you near the track. There is no point West of the point 'M' that it is possible to see the Southbound train coming all around the curve. The point 'M' is 90 feet from the Southbound track and you cannot see the train after it passes point 'T' until it reaches nearly the platform at 'Q.' Somewhere between Point 'M' and the track you could see a train coming all around the curve, but I do not know at what point, as I did not investigate that, but it would be a point very close to the tracks. On the plat are a lot of black dots marked 'poles.' These dots are not put on at random, but are put on from actual surveys and the distance between these poles on the West side of the Southbound track is about 200 feet between the first and second, about 180 feet between the next two, about 180 feet between the next two, and about 180 feet between the next two. I do not know that these poles are about 100 feet apart. This is the way we measured. We did not measure each pole that way because we did that all with the transit. A stadium is when we take the transit and the rod and measure the distances with stadium measures and measured along the county road here to check them up opposite the posts. We did not take any measures right along the tracks. We did not

make any actual measures with the tape or measure because we did not have to do it to get the distances. When this plat was made, we did not know where the Westerly line of the company's right of way runs and we could not say whether the top of this bank is inside or outside of the company's right of way except that at the point 'C' the company's men were working. There were a number of large logs that were just about to tumble down on the cut on the track, and they were taking them back up the bank. I could not see where the company's right of way runs along there, and this line which we have drawn consisting of dashes, indicated by the word 'bank' represents the top of the bluff on the Westerly side of the track and that bank is as much above the level of the tracks as the figures indicate, and where the figures are 134.8, between the figures marked in red 13 and 14, means that the point is 34.8 feet above the crossing as we assume that the crossing was at an elevation of 100 feet, and everything has reference to the elevation of the crossing and at the point 'C,' which is the highest point, it would be 44 feet immediately West of that also. The distance of the point opposite 'C' from the top of the bluff to the Westerly rail of the Southbound track is about 50 feet, which is about as great as any distance along there. That is above the macadam the highest point. South of this dotted line, consisting of dashes, at a point indicated by 'X' is the fence that starts from the edge of the county road and follows along between the line and the right of way, as I take it,

of the Puget Sound Electric Railway Company. Just for a short distance there is a county road or public highway of some sort running in a Northerly direction parallel with these tracks and then it turns West. I cannot say, I am not sure, how far from this platform marked 'Q' does the county road run Northerly, but I think it turns at about the point marked 120.8, which would be about 120 feet from the point 'B,' and the distance from the Easterly margin of that public road to the Westerly rail of the Southbound track is about 33 to 34 feet. It looks on an average to be about 30 feet, and this county road runs parallel with the track on the Westerly side and intersects the main traveled road, but I don't know whether you could call it a county road. It is some kind of a public road that comes right down to the point just West of the tracks. This bluff begins to slope upward at about the South end of this platform on the North side of the highway. You see my elevation was a foot and a half above the car track at the corner of the fence so that it just starts from there. It is practically level and then it starts up, and when it comes to the height of about 20 feet from the level of the railroad at a distance back from the crossing, it is about 150 feet. That is, about 150 feet back of that, the bluff is 20 feet high and the fence is still above that. In that portion of the highway crossing the tracks which is indicated by a red pencil mark, appears the figures 5 per cent, which means that there is a rise of a foot and 9-10 from the track to this point, and that

means a 5 per cent grade. The most of the road is a 4 per cent grade except for that little piece right there. As I testified before, the average is about 4 per cent. This 5 per cent grade extends about 45 feet South of the crossing." Q. "Now, you were down there not long ago and you say you are familiar with that; now is it not a fact that as you approach the railroad crossing from the Westerly side coming in towards Seattle, that just before you get to the tracks, and for a distance back of about 20 feet that that road flattens out and is almost level for 20 feet?" A. "Just a little piece right near the tracks." Q. "Just before you strike the tracks as you are driving towards the track in a Northerly direction, the road does flatten out and is almost level?" A. "It is less than a 4 per cent, yes." Q. "Is it not almost level; is it not substantially level?" A. "4 per cent is substantially level. When it is only one foot in 25 that is pretty near level." Q. "That substantially flattened out portion extends back from the Southbound track about how many feet—20 feet or something like that?" A. "Well, I don't remember that it flattened very much, because if it had been very much of a break I would have noted it on the plat." Q. "Is it not true that as the road actually reaches the West rail that there is a slight upward inclination?" A. "Not to my recollection." Q. "Now in speaking of a 4 per cent grade and a 5 per cent grade, you mean four feet or five feet rise in every 100 feet, don't you?" A. "Yes." (Continuing.) "I am somewhat familiar

with the percentage of the grades on the down town streets in the business district. I do not recall a 4 per cent grade off-hand, but a 5 per cent grade is between Pike and Pine on Second and between Pike and Stewart on Second in Seattle, Wash. That is about a 5 per cent grade. The electrical alarm danger post spoken of I think I testified was about 17 feet from the county road and about 10 feet from the West rail of the West track, and is located on the North side of the county road and the West side of the railroad tracks. I should say this post was 8 or 9 feet high. I did not measure it. I did not count the number of electric lights on the top of it. There is something like 4 or 5 or a half dozen, and there was also two large crossboards which says "Railroad crossing" on it. I did not measure the size of these boards. They are the ordinary railroad crossing. I would say they were 4 or 5 feet long and my recollection is 6 or 8 inches wide, and they are painted white and the lettering on them is black. This pole is shown on the plat and is marked "alarm pole," and is accurately located on this plat (Exhibit 10) with reference to the tracks and to the county road. There is nothing to obstruct one's view of it coming right straight down except as you come around the curve here; you come around a slightly descending grade and the grade increases as you come near the railroad track. The extreme distance shown on the map to the South of the railroad track is about 380 feet. It is about 300 feet to the South end of the 4 per cent grade and from there on it is

2 per cent." "Q. "Back here at the South end of the 4 per cent grade, is there anything to prevent a traveler coming toward the track from seeing the danger signal and that electrical pole? Can't you see it right down there according to your own drawing? A. Yes, sir, you can see it right down the road. (Witness was handed Exhibit 1 and continued): "I recognize the locality shown in that picture. I also recognize the electrical pole and the danger signal. I think this picture is a correct representation of the situation, and that is the danger signal right there in it. I have heretofore testified about some small settlements in that locality among which was Riverton. It is not very thickly settled. The houses are scattered out. It is cut up into small acreage within, say, two or three hundred yards. I imagine there are 8 or 10, something like that, houses practically about that, within 200 or 300 yards of the crossing to the South and West. There is nothing which you would really call a town. Tukwila is something like a mile or two from Riverton. From Riverton to Kent or Auburn it must be 10 or 15 miles." Q. "But right at the crossing, at the Riverton crossing, you would call that a country district in through there, would you not? A. Well, it is pretty thickly settled for an ordinary country district. As I said before, it is cut up to the South and West of the track—in fact on both sides of the county road, it is cut up into small tracts and sold off in small garden tracts. Q. Acreage tracts, or something like that? A. Yes, sir. Q. Not over

two or three hundred people living within a quarter of a mile of that crossing, are there? A. I suppose somewhere along there."

#### Redirect Examination.

"It is practically all settled and a continuous settlement from the city limits along this main thoroughfare for a distance of 4 or 5 miles from the South boundary of the city. There is a small village between Riverton and Tukwila called Foster. I have been familiar with this thoroughfare since 1903, and my familiarity is based on traveling backwards and forwards on the Interurban and on the county road whenever I have had occasion to go that way, which has been frequent, and my business takes me out into the districts outside of the city frequently. We are surveying in all parts of the county and have been since 1903." Q. "Now, from such familiarity with that highway at that crossing, can you give any expression as to the amount of traffic that passed over that crossing during the year 1912? A. Well, not in point of number I cannot. I know that it is the most heavily traveled road leading into the city; it carries the largest volume of business, and has continuously and did in 1912. The volume of traffic is large; it being the only level road from the South into the city, both farmers and automobiles and freight of all kinds comes that way unless it goes by rail. The territory South of that point in the Duwamish Valley and also the White River Valley is also very thickly settled, at least portions of it,

and practically all cultivated in the valley, and the people living in those districts utilized this road in coming into Seattle. The post carrying the electric pole and lights is shown in Exhibit No. 6 and is the same alarm post which I have marked on my drawing. I could not say how long this alarm pole has been there. My recollection is it was not there in 1903 when I first began to travel the Interurban very extensively. It was put up after that some time. I do not know whether it was there in 1912, but I think it was. This picture having been taken in August, 1912, it must have been there then. I do not know how long it had been there before that. (Witness was shown plaintiffs' Exhibit 8, which is a photograph taken 60 feet from the crossing.) "This picture shows the bank that defendants' counsel has called my attention to that is West of the platform. It is covered with brush and vegetation. Plaintiffs' exhibit 8 shows what one of my photographs shows, only not so extensive because I was farther up the road,—it shows that as a car coming from Allentown comes on the southbound track, it comes into this pocket, as it were, and comes out here again. This is the fence as I have shown here on my map. From "B" Northeasterly is the one shown on the map from this point going up to the left up to here. To explain the method by which we surveyed these poles, I would say that the transit has stadia wires in it, and you take a stadia rod and it is marked into one-hundredths, each hundred on the rod intercepted between those two cross hairs means a foot in horizon-

tal distance plus the fixed or the constant in the transit; that is from the object glass to the center of the transit, and this is the usual method for surveyors or civil engineers to ascertain distances when you do not have it right down to the exact foot, because you see if you read your rod one-hundredth off you would be one foot off in your distance, and you see we had long distances here and we checked some of them so that—in fact we checked our transit so that we know that they are accurate, and for all ordinary work it is finer and quicker than the other method."

Recross-examination.

"While I have stated that I have been somewhat familiar, more or less, with this road for a number of years past, I do not remember whether before and during the month of July, 1912, there was a sign saying, 'Warning—300 feet to the railroad.' I saw it there in January of this year. I could not say when it was erected. I could not say it was there as much as 18 months ago."

Redirect Examination.

"Q. Mr. Gardner, from your experience and knowledge as a civil engineer you may state whether or not this is a dangerous crossing." (Counsel for defendants object. Objection sustained. Exception noted for plaintiffs.) "While I was there making this survey I made some observation with reference to the sound of an approaching Southbound car at this crossing, and I observed that as a car approaches from the North there is very little warning as far as the actual noise from the car goes, because

on account of this bank and the curvature in it when the car is approaching from the North and you are coming on the road here you will hardly hear it, especially if you are in an automobile, because this bank diverts this sound to the East and it turns to the South here and it has a tendency to divert it at right angles to the bank. I went across the bridge and on the East side, and the sound there is very distinct as compared to the sound up along the county road Southwest from the crossing. As you are coming down the county road the sound is not as distinct as it is anywhere to the East because this bank diverts the sound across the river."

Recross-examination.

"If I were standing back say 100 feet to the West of the tracks and had stopped and listened and there were no other noises I think I could hear a train coming all around the curve." Q. "You could hear it even farther back than this if there were no other noises? A. As I say, though, the ordinary noise which you hear from an Interurban car is very much lessened on account of this bank and the natural conditions of the crossing there." "I will tell you what happened when we were there making observations. We were up the road 90 feet when we were taking these photographs, and the car would start to approach before we would know it; we were watching the time, after we got through making our topography work, and a number of times, or three times, the car approached before we know it. We were listening for it and had our minds fixed on tak-

ing the picture, and we wanted to take the picture when the approaching car was coming. We were 90 feet from the crossing, and we could not hear the car until it got South of the Allentown bridge. I could not say how far North of the Riverton crossing the car was when we first heard it. I could not state definitely the distance. I know twice the car got down too far when we were standing back there; we went back there and while we were setting the focus in the road and we thought we would listen for the car, it got down in the pocket and we did not catch it, and then one of us had to stay at the crossing to make sure it was coming. It is only 1200 feet from the Riverton crossing up to Allentown. It is less than 1200 feet up to the draw-bridge which is South of Allentown Station, and about 1200 feet to the Allentown Station." Q. "Now, can't you give the jury the distance—I don't expect you to give it to them in exact feet, because I know that you didn't measure it, but so that we would get a fair idea—when you were standing back 90 feet listening for this train,—how far North of the crossing it was when you could first hear it? A. Well, by standing here and not making any noise at all, as I recollect, we heard it just as it was pulling in to the Allentown Station," (Continuing) "which would be about 1200 feet North of the crossing, and we were 90 feet back from the railroad track, but the noise that we heard was practically nothing in comparison to the ordinary noise of the Interurban. We could hear it as plain as on the other side. We could hear it 1200

feet away when we were 90 feet back from the crossing, provided we stood perfectly still and made no noise at all and listened for it. The electric danger bell rang while these trains were passing on the day that we were there. We did not test it to see how far from the crossing we could hear it. We were back as much as 300 feet from the crossing when one of the trains passed, but I didn't pay any particular attention in regard to the gong ringing at the time, and do not know how far we could hear the gong down the road. I could only guess the distance, and I would rather not make a guess. The gong is a fairly good sized gong and makes just about as much noise as the gong on an ordinary street car."

#### KENT BRODNIX, WITNESS ON BEHALF OF PLAINTIFF.

"My name is Kent Brodnix, and am an automobile driver and repair man, having followed this business seven years, and was following this business in July, 1912, and was then employed by Dr. Rininger, the deceased mentioned in this case. Dr. Rininger at that time owned a Sterns and I had been driving it a few days over three months prior to July 25, 1912. To a certain extent at that time I was familiar with this crossing known as the River-ton crossing. During the afternoon of July 25, 1912, Dr. Rininger, the nurse, Miss Davis, and the Doctor's sister, Miss Rininger, and myself had been to Kent. We were on our way back to Seattle, and

approached this crossing a few minutes after 4 in the afternoon. As I was coming along as usual and when I got to the top of this grade possibly 300 feet back from the crossing, as I always had done before, I released the engine from the machine and started coasting down this grade, using the brake to control the machine, and I got down almost to the store and I looked to the South to see if there was any trains approaching from that way, and then looked towards the North, and I could not see any there. We were going about 15 or 16 miles an hour, not to exceed that. As I looked to the North, I did not see any car, and I let the machine come on down, and I looked to the South again between the freight house and the store, and then turned and looked to the North again, and the car was only a short distance from the crossing. I mean by this the Interurban car. Before this I had made an effort to listen to ascertain whether there was any car approaching. I heard no sound at all of any approaching car. I did not hear any whistle or the ringing of any bell on the car." Q. "Do you know whether the Doctor himself made any effort to ascertain if there was a car approaching? A. Yes. Q. Now you may state to the jury what you saw the Doctor do, what efforts, or what the Doctor did in respect to ascertaining. A. He looked both ways. Q. When you say both ways, what do you mean? A. To the North and to the South. Q. And did he indicate to you as to what should be done? A. Well, he gave the customary signal to go ahead. Q. At that time as you

were approaching or at the time you saw the electric car approaching, was the electrical alarm ringing?

A. Not that I heard." (Continuing.) "As soon as I saw the approaching electric car I set the brakes and locked both rear wheels and allowed the machine to stop as quick as possible. We were in the neighborhood of 25 to 30 feet West of the West track when I first saw the electric car. After I had set the brakes of the auto, both rear wheels skidded. I was able to bring the auto to a stand-still before the electric car came along. The speed of the electric car, I should judge, was from 40 to 45 miles an hour. The motorman was not slowing down the approaching car that I noticed. I should judge the electric car was from 100 to 150 feet away when I first saw it. The electric car struck the front end of the automobile." "Q. What happened? A. It picked the machine up and threw it back from the track about 35 feet and almost completely turned it around." (Continuing.) "The Doctor and the other two occupants were thrown from the machine, but I was not, as I was behind the steering wheel, which prevented me from being thrown. The Doctor was thrown into the front trucks of the car and dragged, I should say, about 50 feet, and was killed. The Doctor's sister was thrown just to the side of the track and Miss Davis was thrown clear through the cattle guard. Referring to Exhibit 10, we came along in the customary manner to the top of the hill, which was somewhere near the point marked "J" where I pushed the clutch out of the engine. Pushing the

clutch out disconnects the car with the engine. This was a down grade, and then the machine moved along of its own weight. Bearing in mind that this plat is drawn to a scale of 30 feet to an inch, I would say that when we first saw the electric car it would be at a point on this map one inch from the west rail of the West track. Just about one inch back up the highway. We were about 300 feet back when I disengaged the engine from the clutch and did not connect the clutch again with the engine before we reached the track. The automobile was at the point marked letter "S" in lead pencil on this plat (Exhibit 10) when the electric car struck it. (Witness is shown plaintiffs' exhibit 1, which is a large photograph.) "I recognize the surroundings in this picture, and it shows the appearance of the highway at that time. It would be hard to make a mark on this picture to show where we were when the electric car struck us. It would be right in behind that railing. It is hard to make a mark there. I mean the railing that is on the platform in front of the store. This road as shown on this picture is a down grade towards the car track. Our automobile weighed, when it was not loaded with passengers, close to 5,000 pounds. Exhibit No. 9 is a picture of the crossing where the collision took place, and I am able to make an indication on this picture as to where we were when the electric car struck us. This is indicated by the letter "S" which I now mark on it, so that the point at the letter "S" on Exhibit 9 is approximately the location where the collision took place. As we

approached the crossing, we were going at a speed, I should judge, of about 15 miles an hour, not to exceed that. Ordinarily I could bring this automobile to a stand-still when proceeding at that rate under similar conditions, in about 25 feet." "Q. You may state whether or not that was a reasonable speed to run your car in approaching a crossing." (Mr. Tait: I object to that as the very question for the jury to determine. Objection sustained. Exception noted for plaintiffs.) "I have been driving an automobile about 7 years and am familiar with the general conditions under which an automobile should be operated." Q. You may state if you know what would be a reasonable rate of speed to approach a crossing similar to this with an automobile of the weight of this automobile with the number of passengers in it that you had at that time. (Counsel for defendants interposes the same objection. Objection sustained. Exception noted for plaintiffs.) "Since this accident occurred I have made personal observations of the surrounding conditions at the crossing, and I have made observation with reference to the ability to see a Southbound car or train approaching this crossing, and have also made observation with reference to the sound that is made by such a car, especially with reference to the ability of one being at this crossing to hear the approaching car. Last summer was the last time I made these observations. I also made similar observations shortly after the accident. I found that while you could see the car at the bridge, that it

goes completely out of sight from that time until it gets to the crossing. I mean by this bridge the one that is shown on plaintiff's exhibit 10, which is the bridge for the main highway across the Duwamish River."

Q. Is there any point on or near the crossing where you could see an approaching Southbound car all the time after it leaves the Allentown station?

A. Yes. Q. Whereabouts is that? A. I should judge 25 or 35 feet from the track." "You could see some portion of the car but not all of it after it leaves the Allentown Station. The perpendicular bluff there, with quite a bit of shrubbery on it, interferes with the vision or ability to see the car. When you are on the crossing you can see the car all the time. I also found that if you did not listen pretty close you would not hear an approaching car at all until it was right almost at the crossing. This was on account of the bluff, which has the effect of throwing the sound over across the river in an Easterly direction. That is the bluff diverts the sound and throws it Eastward."

Q. Now at the time that you were approaching this crossing on July 25, 1912, state what information, if any, you had respecting these defects in your ability to see the car, or the diversion of the sound. A. Why, at that time I had not been informed at all. Q. Did you have any knowledge at that time about the difficulty in seeing an approaching car? A. No, sir. Q. What knowledge, if any, did you have at that time respecting the difficulty in hearing the sound of an approaching car?

A. I knew nothing about it at all." (Con-

tinuing.) "During the season of 1912 there was considerable traffic over this crossing. This road carries the largest traffic of any road leading South from Seattle. It is practically the only road that the general public traveled at that time going South from the City of Seattle, and was the only road given in the route books. The street car proceeded about 200 feet, possibly more, after it struck us and before it came to a stand-still. I did not observe any conduct on the part of the motorman as his car approached us, as I was very busy with the auto." Q. You may state what if any, sounds or signs of warning or any other character of warnings that was given to you or the Doctor at that time as you approached the crossing. A. None that I heard. Q. Did you see any? A. No, sir. Q. Was there a watchman at the crossing at that time? A. No, sir. "I had never seen any watchman at this crossing before the accident. I do not know how frequently the cars and trains of the defendant passed this crossing at that time. I know that Dr. Rninger himself made effort to ascertain if there was an approaching car, as he looked both ways, North and South." Q. Did you listen as you were proceeding along to ascertain whether you could hear any sound of an approaching car? A. Yes. "At the time that I disengaged my clutch, the Doctor was in one of the front seats beside me talking to the occupants in the rear of the automobile. He was sitting somewhat sideways, facing to one side. We were going in a Northeasterly direction. Our machine was a right

hand drive, and the Doctor was sitting on the left hand side as you were going, and his face was turned toward the South as he was talking to the ladies in the back seat, and naturally he could readily see in a Southerly direction. He afterwards turned around and looked to the North. After he turned around and looked to the North, I think he turned back to the ladies, but I am not positive. When he turned around and looked toward the North, I should judge we were about 50 or 60 feet from the tracks. He did not carry on any conversation with me or the ladies after he looked toward the North.” Q. You may state whether or not his position and attitude indicated that he was listening for sounds or signs of an approaching car. (Mr. Tait: I submit that the witness should be required to describe his attitude. The Court: The objection is sustained as leading.) Q. You may state in a general way what his conduct was with reference to the Doctor making observation to ascertain if there was an approaching car. A. Well, he sat there and was looking, and made no sound. He did not say anything.” So far as I know the Doctor’s hearing was normal and I had never detected any defect in his hearing, and I do not think that his eyesight was defective. At that time there was no defect in my hearing. It was normal as it always had been, and there was no defect in my eyesight or in my ability to see objects.

#### Cross-examination.

“Dr. Rininger’s automobile was a Sterns, and I

should judge that it weighed close to 5,000 pounds, from 4,400 to 5,000. It was considered a four-passenger car. It would hold the chauffeur and one passenger on the front seat and two persons in the rear seat. That is an unusually heavy car for a 4-passenger car. I do not know what the average weight of an ordinary 7-passenger automobile is. I have never seen Dr. Rininger's car weighed. I estimate its weight by the horse power. You can make a fair estimate of the weight of an automobile from the horse power. The reason that I can estimate the weight of this machine from the horse power and cannot estimate the weight of a 7-passenger automobile is because 7-passenger automobiles are liable to have 30 or they may have 90 horsepower. All automobiles of 30 horse power have approximately the same weight and all automobiles of 50 horse power have approximately the same weight, and this is true irrespective of the seating capacity. This car was 60 horse power and 60 horse power is about the limit for the average 7-passenger touring automobile as a general thing. The majority of 7-passenger cars are six cylinder. In my judgment this 4-passenger car would weigh as much as the ordinary 7-passenger car. I had been driving automobiles in King County about six or seven months before this accident, and had passed the Riverton crossing before this accident 5 or 6 or 7 times coming and going, both ways; that is, going out and coming back altogether would be 6 or 7 times, and I had passed over it a number of times, several times at any rate, driving toward

Seattle. I could not say within what length of time preceding the accident I had passed over this same crossing, but it was within 2 or 3 months. I knew that the Interurban line was there and knew that the bluff was there. I did not know that the bluff obstructed our view of the train as it approached from the North. On the other occasions when I passed over the crossing driving toward Seattle, I looked to see if trains were coming, but did not discover on these previous occasions that the bluff cut off our view of a train coming from the North." Q.

Well, if you looked how did you fail to discover that?

A. Because you could see the track down by the bridge there and unless you looked close you would not know that the car would go out of sight between the bridge and the crossing. Q. Had you ever, on crossing over this crossing before, encountered a Southbound car? A. No, sir. Q. Did you ever see one coming? A. I don't think so, not that I remember of. Q. Then as a matter of fact, when you were reaching the crossing on the occasion of this particular accident you did not know whether the bluff would obstruct your view of the Southbound train all the way to Allentown or not? A. No, sir. Q. As you approached the railroad tracks were you looking towards the north continuously from the time you got within, say, 100 feet of the tracks, until you saw the train? A. No, sir. Q. Which way were you looking? A. I looked South and North both.

(Continuing.) "I should judge I was about 25 feet —from 25 to 30 feet from the track when I first

saw the train. I had looked to the South just prior to that time and had looked to the North possibly 30 feet farther back, so that I should judge that the last time I looked toward the North I must have been about 55 feet from the track and saw no train. When I first saw the train I could not say exactly how far it was from the crossing, but I should judge about 100 feet, but I could not say positively, and when I first saw the train I saw it across the point of that bluff on the left hand side of the county road, and I was looking directly North or up the track in a Northerly direction at the moment the train came into view from around the bluff. I saw the train just as soon as it emerged from behind the point of the bluff. At that time we were running our automobile at about 12 miles an hour." Q. Well, I understood you to say this morning that you were running at fifteen or sixteen miles an hour. A. Well, right at that time I was not running as fast as I had coming down the hill. (Continuing.) "I was running from 15 to 16 miles an hour as far back, possibly, as 100 feet from the track, but when I saw the train coming, I should judge that I was not running to exceed 12 miles an hour, and we were then within 25 feet of the track." Q. And at 12 miles an hour, within what distance do you think you could have stopped your machine? A. Well, I don't know—I know I stopped it, that is all I know. Q. It took you 25 feet to stop it, didn't it? A. I should judge it was close to 25 feet. (Continuing.) "I first saw the train when I was within 25 feet of

the track and then applied the brakes so hard that it skidded the rear wheels and the machine moved forward until the front end of the automobile was so close to the rails that the overhang of the electric car struck it. The front wheels did not cross the rails of the track, but stoped just before we got to the rail. We stopped about close enough so that the body of the car hit us. I think that our wheels skidded the entire 25 feet on the ground, or that distance, whether it was 25 feet or not I cannot say. The rear wheels skidded from the time that I set the brakes. It was the goose-neck of the automobile that was hit. That is the part of the frame that holds the front spring. It was struck on the right hand side first,—the right hand gooseneck. The goose neck is one of those two large springs in the front of the automobile that support the body above the axel. It is the part of the frame that goes out to the end and fastens to the outer end of the front spring, and it is probably the most forward portion; as a rule it projects farther than any other part of the automobile, and goes out nearly even with the front edge of the wheels. It was the front end of the electric car that struck the goose-neck. That is the forward right hand corner of the electric car, which whirled our front end around to the right. I threw the clutch out when we started down this little grade about 300 feet from the track. This disconnects the driving power of the engine from the rear axel of the automobile, but does not stop the engine, which continues to run and makes some noise,—

makes just about as much noise as it does while the clutch is connected, so that so far as the noise of the engine is concerned, it didn't make any difference whether we threw out the clutch or left the engine connected. I think the engine was still running at the time of the collision. I could not describe the amount of the noise the engine made, but it makes quite a little bit of noise." Q. Don't you think that it made noise enough to interfere, to some extent, with your ability to hear the approaching train? A. It might have. So that, if you had stopped your engine within, say, 50 or 75 feet of the track, don't you think you would have been better able to hear the approach of the train? A. I don't think so. (Continuing.) "There was other noises there besides the engine." Q. But the more noise your engine was making the harder it would be for you to hear, wouldn't it? A. I don't think that it would make very much difference. Q. It might make some difference? A. It might make a little. Q. You don't mean to have the jury understand as you testify, Mr. Brodnix, do you, that you could hear just as well, just as distinctly, with the engine running as you could have heard if you had stopped the engine, do you? A. If there was enough outside noise I don't see that it would make any difference. Q. What other noise was there? A. There was rigs traveling on the road. (Continuing.) "There was a wagon that I know of that was traveling behind us. I don't know just how far it was at that time, but this wagon was not struck by the train. This wagon

might have had a material influence with our hearing the approaching train besides the bluff, but I could not say whether it did or not. I did not hear it myself. If I had stopped the engine it is possible that I could have heard a little better. There was a coroner's inquest over the body of Dr. Rininger held the day after the accident in the undertaking parlors of Bonney-Watson Undertaking Company in Seattle, on July 26th, and I testified at that inquest. As to hearing the electric gong ringing at any time before the accident, I could not say absolutely positive, but I do not remember hearing it." Q. Did you or did you not, at the coroner's inquest, testify in substance and effect as follows: 'Q. How fast were you driving as you approached that track? A. I don't think I was traveling over 15 miles an hour. Q. There is a gong there, is there not, on the railroad? A. Yes, sir, there is a gong there. Q. Was the gong ringing? A. I didn't hear it until I was within about 15 feet of the track; was the first I heard the gong'. Did you or did you not testify in substance and effect as I have just read to you? A. I think I gave that, yes sir. Q. Now in giving that testimony you were testifying the day after the accident, were you not? A. Yes, sir. Q. And the facts were then, probably, somewhat fresher in your memory than they ar now? A. Well, I could not say that they were. Q. Well, having testified within a day after the accident that you heard the gong when you were within about 15 feet of it, what is your testimony now, that you did or did not

hear the gong before the accident? A. That I did not hear it. Q. Why did you testify at the coroner's inquest that you did hear it when you were within 15 feet of it? A. Under the conditions that I was naturally in after the accident I could not say positively. Q. Do you think you were mistaken in giving your testimony at the coroner's in quest? A. I think I was mistaken, yes sir. Q. But you did testify to it at that time, didn't you? A. Yes, sir. Q. At the time and place I have mentioned, did you or did you not testify in substance and effect as follows: 'Q. Did you hear the gong or see the train first? A. I saw the train first. Q. And after you saw the train you heard the gong? A. Yes, sir.' Did you testify to that effect? A. Yes, sir. Q. Notwithstanding that, you will wish to testify now that you did not hear the gong? A. I did hear the gong afterwards. I don't think I stated in that just when I heard it afterwards. (Continuing.) "Under the conditions it would be hard to say just how fast the railroad train was going when I first saw it. I have stated this morning that I thought it was going about 40 miles an hour. At the coroner's inquest I testified that I could not tell exactly about the speed of the railroad train, as I was looking over near the end of the car. I should guess about 30 miles or better." Q. Did you testify at the coroner's inquest in substance and effect, as follows: 'Q. If that gong was ringing before you saw the train, was there any reason why you could not have heard it? A. Only the noise of

the machine and the gong not being loud.' Did you testify to that? A. I think I did. Q. At the coroner's inquest, Mr. Brodnix, did you testify in substance and effect, as follows: 'Q. Where is the gong located with reference to the crossing? A. It is on the left hand side going this way. Q. Right at the crossing? A. It is right by, next to the bluff. Q. What kind of a gong is it? A. I did not look at it especially. It is a regular signal gong. Q. Is it such a gong as could be heard some distance if the engine was not in operation—nothing to obstruct the sound? A. If it was still I think it could be heard a block away.' Q. Did you testify to that effect? A. I think I did. Q. When you said 'if it was still', you referred to the engine in your automobile? A. No, sir. Q. What did you refer to? A. I referred to any sound which might be there. Q. Now the question is 'Is it such a gong as could be heard some distance if the engine was not in operation—nothing to obstruct the sound', and your answer is 'If it was still I think it could be heard a block away'—you say you did not refer to the engine in that answer? A. It says there 'Nothing to obstruct the sound'. There could have been other sound besides the motor. (Continuing) "I had seen this electric signal in passing over this crossing before. I had seen the cross sign boards on it and knew that there was a railroad crossing there. I do not recollect a sign nailed on a telephone or telegraph pole on the right hand side of the road about 300 feet back from the crossing saying in substance

and effect "Danger, 300 feet to the railroad crossing." I have seen it since, but I had not seen it before the accident. It was a couple of weeks after the accident before I saw this sign. Not on the same pole but on the right hand side of the road I had noticed a sign posted by the Seattle Automobile Club giving warning. That was there on the left hand side on July 25th, but that was at the road that goes into the main road clear above the grade there. I don't know how far from the railroad, but I should judge 500 or 600 feet, possibly farther than that. I did not hear any whistle blown by this train. I don't say it was not blown, but I did not hear it. The customary signal that Dr. Rininger gave me to go ahead was a nod of the head. I could not say exactly how far we were from the track when he gave this signal, but according to my best recollection I was possibly 5 or 10 feet back from where I first saw the car. I should judge something like 30 or 35 feet from the track." Q. Now do you wish to say, Mr. Brodnix, that from 30 to 35 feet back from the track there would be any point between the crossing and Allentown where an ordinary passenger train would be obscured from view by reason of this bluff? A. Well now, as to that I could not say. Q. Don't you know as a matter of fact that if you had looked when you were 30 or 35 feet from the track that you could have seen a car at any point in that curve? A. No sir, I don't know it. (Continuing) "The weather was warm and the day was a clear, bright, sunny day. I don't remember

whether it had been warm and clear for some time before. The road, which was a macadamized road, was at that time dry." Q. Is not a dry macadamized road about as good a surface to stop on as you could get? A. No sir. Q. What would be better? A. Well, that road at that time was warmed by the sun and the pitch would roll. (Continuing) "It was a preparation of pitch. I don't know what it is made of, but it is a preparation of pitch and that pitch when warm is soft and gives but very little resistance. There was pitch on the road at that time. There was not a good deal of dry dust on the road. I had lived in Seattle and King County for six or seven months before the accident and knew that trains passed over that track at very frequent intervals. I did not know that two Interurban trains left Seattle and two Interurban trains left Tacoma every hour. When Dr. Rininger, as we approached the track, was talking to the ladies in the rear, in turning around to look back to them so as to talk to them, he was turned toward me and his back would be practically toward the North. I could not say exactly how close to the track we were when he turned around in his seat and looked toward the North, but somewhere about 50 or 60 feet, and when we were somewhere about 50 or 60 feet from the track he looked toward the North and I looked also and there was no train in sight. As we were going towards this railroad crossing there was no point at which we stopped before reaching the track for the purpose of looking and

listening to see if there was any train coming, and there was no time at which we were running less than twelve miles an hour until the train was within 25 feet of us, and I applied the brakes. I should judge I was running about 20 miles an hour when we got to the top of the hill back 300 feet from the track."

Re-Direct Examination.

Q. Mr. Brodnix, what was your mental condition for the next 24 hours after the accident? A. well, it was anything but good. Q. Was that due to the shock on account of the accident? A. Yes, sir. (Continuing) "The coroner's inquest was held the next day after the accident, and I had not recovered from the shock and excitement of the accident. Mr. Tait was present at the inquest. He was there representing the defendants in this action. There was no body there that I know of representing Mr. Rininger. It was rather an informal investigation by the coroner. I will explain a little more fully to the jury how it is that the weight of an automobile is estimated by the horsepower that it contains; that is the horse power of the engine. If the horse power is low, it is not necessary to have the weight of the frame there to hold it, and if the horse power is increased it is necessary that the frame and the rest of the car be built in proportion to the horse power. In other words, an automobile having an engine that develops sixty horse power must have a larger and heavier framework to stand the motor than an automobile that has only a thirty horse

power engine. As a general thing there is not a great many hundred pounds difference between the weight of a 7-passenger automobile and a 4-passenger automobile if they each have a 60 horse power engine, so that if a 7-passenger auto only had a 30 horse power engine it would not weigh much more than a 4-passenger auto with only a 30-horse power engine—it probably would not weigh over 500 pounds more any way. At the time that we approached this crossing I think our machine was entirely on the macadamized portion of the road. When we stopped we were not on the macadamized portion, as the two left-hand side wheels were on the macadam and the other two were off. Several minutes after the accident, I heard the gong ringing so that when I stated in one of my answers where I was asked whether I heard the gong or saw the car first, it was true that I did see the car first. I presume it was precaution that made the Doctor stop his conversation with the ladies and turn around to ascertain if there was a car on the track."

#### Re-Cross Examination.

"While I said that Mr. Tait was present at the coroner's inquest representing the defendant, there was some body else there who interrogated me. I did not know his name was Mr. Steele or that he was one of the prosecuting attorneys. I do not think Mr. Tait interrogated me. I presumed that the coroner was conducting it. I now state that after the accident I heard the electric danger signal

ringing the gong. I stayed down there some little time before I came to the City of Seattle. I do not know how long after the accident but there was a train came down from Seattle on the Southbound track to Riverton and stopped there for some time. I would not think it was as long as 15 or 20 minutes but I don't know, and I could not say whether the signal gong was ringing all the time that this second train was there or not, but it did ring part of the time. I don't know whether it was the second train as it came down that started the bell ringing or not. The gong was ringing part of the time that the train was standing there." Q. Was there any of the time that the second train stayed there that the gong did not ring? A. Well there were times when I did not hear it. Q. There were times when you were not paying any attention to it, was there not? A. Well, I could not say as to that.

MRS. RORIA SPRINGER, WITNESS FOR  
PLAINTIFF.

Mrs. Roria Springer, witness on behalf of Plaintiff, testified as follows:

"I am a wife of Oscar Springer who is one of the deputy clerks at the county court house and reside at Riverton, and was residing there in July, 1912, at the same place." (Witness shown plaintiffs' exhibit No. 1). "I recognize this picture. That is a photograph of the highway as it leads down and across the tracks of the defendant at Riverton. On or about 4 o'clock in the afternoon of

July 25, 1912, I was at the station. I went down to the station with my sister. She was coming to town, and I saw this accident by which Dr. Rininger lost his life. I was at the point marked on exhibit 1 with the letter "D" at the time the electric car struck the auto; that is at that time I was at this point marked "D" on exhibit No. 1. A little girl and also my own little girl were with me at the time. I did not see the electric car just as it struck the auto, but did see it before it passed the crossing. I was about 30 feet, I presume, probably more than that, from the crossing. I was probably 15 feet from the platform of the store, that is about 15 feet West of the platform and was going directly from the station toward home. I had reached this point when the car came along. I did not hear any whistles from the approaching car as it came along. I have seen this electric gong that was on this post that is shown in plaintiffs' exhibit No. 6, and know where it is situated and have heard it ringing at different times, and I know what it is there for." Q. I will ask you to state whether or not that gong was ringing at the time of this accident. A. I did not hear it. (Continuing) "I did hear it ring sometime after; that is when the next car came along. Probably 15 or 20 minutes afterwards I heard it ring. It was a clear day, no wind was blowing, and if the gong had been ringing at that time I could have heard it. The automobile that the Doctor was riding in passed me and I was standing at that point (showing). I did not think that the automobile was run-

ning fast. I am not accustomed to riding in an automobile and would not be able to state at what rate of speed it was going. I have lived in the vicinity of Riverton about 5 years. I could not say how many people reside within 300 yards or 900 feet of this crosisng, and there is a great deal of traffic over this thoroughfare, and there was such in July, 1912, and the cars of the defendant ran on these tracks at that time frequently. There were 4 trains an hour passing over this crossing. There was no flagman or guard maintained at the crossing at that time, and there were no gates maintained there to warn the public of approaching cars. I heard no whistles from the Southbound car which struck Dr. Rininger's automobile. If that Southbound car had blown the usual signals after it left Allentown Station and before I reached this crossing I think I would have heard it."

#### Cross-Examination.

"I cannot say the exact distance from this railroad crossing at Riverton that we were living at the time of the accident. We lived on the second street back, near the school house about a quarter of a mile. At this particular time and on this particular day I was down to see my sister into town. She had boarded the train and gone, and I was walking back down the road on my way home. Just before the accident I stopped and talked a little bit to the South of the platform that leads from the railway to that grocery store; I was talking with Mr. Rosen-

burg, and I was facing the store and my side was toward the crossing and I was engaged in conversation with him at the time the collision occurred. I was not paying any attention to either the electric bell or the whistle of the train." Q. You do not wish to have the jury understand that you are swearing unqualifiedly, do you, that no whistles were blown? A. Well I said I did not hear them. Q. You did not hear it? That is all you know about it? A. Yes, sir. (Continuing) "I was standing there talking to Mr. Rosenberg at the time that the train, which collided with the automobile, came down the track and did not hear the electric signal ring. My attention was not fixed on it. If it rang I do not see why I should not hear it. I was not paying any attention to it but was close to it not more than 20 or 25 feet away from it." Q. Don't you know that it is about 70 or 75 feet from the railroad track to the platform that leads across the road to the grocery store? A I could not say. I have not measured it. (Continuing) "I was still farther down the road than that platform a short ways. After the accident, everything that occurred had a tendency to impress itself on my memory and I was paying attention then to everything that was going on, and when the local train, which followed the one which struck Dr. Rininger's car, came down and before it reached the crossing, this electric danger signal began to ring. I could not say that it rang all the time that the local train was standing there, as I did not hear it all the time, but it did ring for some

time after the local got there. At the time that the electric bell was ringing, when the local came down, I do not know whether the red signal lights on the top were burning or not. They did not show up in the day time anything like what they do at night. At the time of this accident there may have been, back about 300 feet from the road South of this crossing, a sign nailed up on a telephone or telegraph pole there, saying "Danger. 300 feet to the car track," but I don't remember seeing it then. I have seen it, but I don't know whether it was there before that. I can't remember."

Re-Direct Examination.

Q. Have you ever known of an instance prior to this accident where the trains had approached Riverton and this electric bell did not ring? Objected to by defendant as irrelevant, immaterial and incompetent. Objection sustained. The Court: "I think this is more properly rebutting testimony than it is direct testimony. If there should be evidence introduced by the defendant that the bell uniformly rang, then you would be allowed to show this in rebuttal, but in your case in chief I feel that I would have to sustain the objection." Exception noted.)

SCOTT MALONE, WITNESS FOR PLAINTIFF  
TESTIFIED AS FOLLOWS:

"I was residing in Seattle in July, 1912, and have resided there since. My occupation at that time was deputy sheriff. I was at the scene of this

accident shortly after it occurred on the same afternoon. While I was there, I made observation respecting one's ability to see or hear approaching Southbound cars on the West track of defendant. I observed when standing about 50 feet West of the railroad track that a train approaching from the North, as it neared the crossing it passed completely out of sight, that is a man who was 50 feet West of the track would not be able to see a Southbound train or car all the way after it left Allentown. That it would pass completely out of sight before it got completely to the crossing. After it passed out of sight it could not be seen again by a person 50 feet West from the track until it got practically on the crossing, until it got on the sub-station on the North side of the crossing it would not be 40 or 50 feet from where an automobile would actually cross the railroad track before you could see it—it would be going right on the crossing. The reason for this is that there was a curve in the track and a high bank on the West side of the curve. At Allentown you could see the train 50 feet from the crossing, and it would get 150 or 200 yards from the crossing, it would begin to go out of sight behind this bank in the curve." (Witness shown plaintiffs' exhibit 7, which is a photograph taken 50 feet West of the track.) "This is substantially a correct representation of the appearance at that time. The bank which intercepts the view is located on the left side of the picture. There was brush and shrubby trees on the bank at that time. They were short like wil-

lows and things growing on the top of the bank and down toward both tracks. I don't remember exactly how close to the tracks that they came down but this brush and this foliage helped to obscure the view. It made the bank that much higher. There are poles that carry wire which run about every 100 feet apart that are in this curve on the track between the Riverton crossing and the Allentown Station. I don't know as they tended to obscure the view. While I was there there was a train came out which approached very slowly and stopped on the approaching side of the crossing."

#### Cross-Examination.

"I made these observations for the purpose of determining how far away I could see a Southbound car coming, which observations were made the same afternoon after the accident. It must have been about an hour or so. I think it was the first Southbound train after I got there. I was not a passenger on the train. I went down with the coroner, as deputy sheriff. The coroner took me out there with him, and I was standing in this position when the train approached and as it went out of sight I called their attention to it, and then made a note of the distance that it was. I did this because I thought it was my duty in a case of that kind for the inquest."

Q. Now, do I understand you to testify that when you were standing 50 feet back from the track that the regular passenger train will pass entirely out of view around that bluff; that you can't see it again

until it is almost at the crossing? A. Approximately 50 feet, not over 60 feet from the track. Q. It will pass entirely out of view? A. Yes, sir, entirely out of view at that distance. (Continuing) "I have just examined exhibit 7. It shows the picture was taken 50 feet back from the track. The picture looks as though it showed that the train could not possibly be out of view but it doesn't show that on that picture. It doesn't show it could not pass out." Q. That picture does not show the West track, it only shows the East track? A. It looks like it is impossible on that picture, but it is not a fact. Q. Then this picture is not right? A. Yes sir, it is right. That don't show the West track at all there. The train would pass completely out of sight as shown there in that picture. (Continuing) "At the extreme Westerly point of the belly of this curve, where it bellies into the bank, you can just barely see the Easterly track. You can't see the Southwest rail of the Easterly track." Q. I hand you a glass and the photograph and will ask you whether that track which appears in the extreme belly of the curve is not the Easterly or Northbound track. I want to know which track it is. A. I believe it does. This picture shows that. Q. Now then, according to this picture from which you have been testifying, there is no point in that curve at which a car traveling over the Easterly track would pass out of view. When you are standing back 50 feet from the track in the road? O. No sir, one traveling North would not. (Continuing) "A car traveling North on the

Easterly track would not pass out of sight, and the Westerly track, on which the train was which struck the automobile, is laid parallel to it and is a few feet from it to the West. While I did not measure the distance, I should think that the East rail of the West track and the West rail of the East track were 8 or 10 feet apart on the turn. I have an idea that the height of the ordinary Interurban passenger coach is the same as the street cars they use here, which would be 10, 11 or maybe 12 feet high." Q. And yet notwithstanding that you can see the train all the way around the curve on the East track, you still want the jury to understand that you are willing to swear that when you stand 50 feet from the track that a train coming South on the West track would go entirely out of your view; is that your testimony? A. Yes, sir. (Continuing) "I think I was down there within an hour after the accident, because we went immediately after Dr. Snyder got the information, and I guess he got it right away. The train that collided with the automobile was still there. I think the local which had followed the car that caused the accident had come in and had gone back to Seattle. It was not there when I got there. There was another train passed while I was there. I stayed there quite a while. There were trains came from the North, and I think probably a train from the South came in. I know I was there quite a while, and as these trains approached the crossing the electric bell began to ring." Q. How far back from the crossing do you think you could hear those electric

belts? (Objected to as not proper cross-examination. Objection overruled, and exception noted.) A. It would all depend on whether you were listening for the bell or whether you were—according to how you were going, whether in an automobile which was making noise. Q. If you were paying attention and listening for the electric bell how far down the road would you hear it? A. You would probably hear it 75 or 100 yards if you were listening for it. I don't know whether you could hear it that far or not—I would not testify you would hear it that far.

#### Re-Direct Examination.

"When I arrived I observed where the train was that struck the automobile. It was about 325 feet somewhere over 300 feet, to the best of my judgment, South of the crossing. The train men informed me that the train had not moved from the place where it was stopped after the accident, so it was in the same position that it was when they stopped it."

#### Re-Cross Examination.

"You understood me to say that when I got down where the Southbound train, that collided with the automobile, was, it was about 300 feet South of the crossing." Q. Don't you mean about 200 feet? A. No, sir. (Continuing) "Yes, sir, I counted the poles. I remember at the time I think I counted the poles and I estimated at that time it was about 325 feet." Q. Near what pole was the train standing South of the crossing? Which pole was it that was nearest to the front end of the train? A.

Three lengths—it must have been four poles to make three lengths of poles from the crossing. Q. Do you recollect counting four poles? A. I counted the length of the poles from the crossing, to the best of my recollection. (Continuing) "I mean I counted the distance between the poles. I testified at the coroner's inquest." Q. Did you testify at that time in substance and effect as follows: 'Did you observe where this train was standing after the collision? A. Yes, sir. Q. How far was that from the crossing? A. Well, that was all I could figure, from those poles; they told me they were 100 feet apart. Three of those light poles and about 25 or 30 feet further, did you testify to that? A. Yes. 'Q. Do you know whether the train had moved? A. The train crew said it had not been moved. Q. It stood where they made the emergency stop? A. Yes, they took the fellow on a cow-catcher. Q. What was the distance from the crossing? A. 100 yards. Q. 300 feet? A. Yes, sir. I understood those poles are 100 feet apart. Q. There were three of them. A. There was 3 of them and from here up to the corner of the window over that. Q. How far was the automobile from the railway track, was it still lying there?' Did you testify, in substance and effect, as I have just read at the coroner's inquest? A. Yes. (Continuing) "I counted 3 light poles South of the crossing. I think to the best of my recollection there was one right South, right South of the freight platform —one right at the North end of the freight platform next to the road, but I did not count that as one. I

think that the front end of the train was past the fourth pole counting that one by the side of the road. I walked down to where the train was standing 2 or 3 times. I am almost positive that the front end of the train was past the fourth pole for the reason that I figured at that time what distance it would be and I made a little note that it was over 100 yards, over 300 feet."

#### Redirect Examination.

"The testimony which I gave at the coroner's inquest was the next day after I was down there when the matter was fresh in my mind. Mr. Tait was present at that examination, and also Mr. Steele from the Prosecuting Attorney's Office."

TRENA BROCK, WITNESS FOR PLAINTIFFS.  
TESTIFIED AS FOLLOWS:

"I am 13 years old and was with Mrs. Springer the afternoon that the train struck the automobile at the Riverton crossing. I had not been down to the station with her. I just came out of Mr. Rosenberg's store shown on this picture, exhibit No. 1. I had started back home with Mrs. Springer as she came by the store. I should judge it was about 10 minutes after I started with Mrs. Springer before the electric train came along. I heard no whistles from the train that was coming South, and I did not hear the electric gong. I know about the electric gong that is near the crossing and that it rings usually when trains come along, but I did not hear it ring at that time. I was no farther away from the bell

than Mrs. Springer was. I had been in the street after the time that I joined Mrs. Springer and before the accident and that was about 10 minutes."

Cross-Examination.

"I was thirteen in May last year, and live about a quarter of a mile from the Riverton Crossing near where Mrs. Springer lives. She is not related to me in any way. I did not go down to the station with her. I just went to the store, and she passed by on her way home as I came out of the store." Q. Now, all you know about it is that if the whistles on that train blew you do not recollect hearing them? A. No, sir. (Continuing) "It may have blown without my hearing it. I had lived there before this accident about a year and a half and had become pretty well used to hearing the electric bell ringing, and I got so that I didn't pay any attention to it, so that when this train that struck the automobile came along it may have been ringing and without my paying any attention to it." Q. You do not know of your own knowledge whether it was ringing or not ringing? A. I did not hear it and I usually listened for it. Q. You were not listening to see whether it did ring, were you? A. No, sir.

Re-Direct Examination.

"I was asked shortly after the accident whether or not the bell was ringing and my attention was then called to it. It is a fact that right away after the accident my attention was called to this matter and my statement then was that I did not hear it."

## Re-Cross Examination.

"I don't remember who it was who talked to me about it. It was about 20 minutes after the accident when some one talked with me. It was not Mrs. Springer who asked me. I went back to the station—down to the platform. It was a girl, I think, a girl larger than I was. I don't know how she came to ask whether I heard the bell ring or not. She just asked me if the bell was ringing and I stayed there about a half hour after the collision. I recollect when the two-coach train came down after the accident and stopped at the crossing and the bell was then ringing and I heard it, but am not absolutely sure whether it was ringing the first time or not. After this little girl asked me if I heard it ringing no body else has talked with me about it except Mr. Hastings, who asked just what he asked me now, and I told him it was not ringing, that I didn't hear it. I did not go up to his office and talk with him. I have never talked with Mrs. Rininger about it. Never talked to any body about it since the day of the accident. No body asked me any questions from the day of the accident until I just testified a minute ago as to whether I heard the bell ringing."

**ISAAC N. EAST, WITNESS FOR PLAINTIFFS  
TESTIFIED AS FOLLOWS:**

"I reside at 228 Orcas Street in Georgetown; have resided there about 10 years. My occupation is that of a tea man. I have a tea and coffee route through the country in the South end of the town

and was engaged in that business in July, 1912. I have been in it for the last 9 years and I travel out through the various neighborhoods South of Georgetown. My territory is from Spokane Avenue South to Des Moines and between the Sound and the N. P. Railroad and I take in Tukwila and Foster. That is, I have the territory for selling our teas in that locality. I have regular customers up there that I call every week. I have a regular route that I travel once a week. I make the trip with a team and wagon. In July, 1912, my team was a Grand Union tea wagon. I guess most everybody is familiar with it. It is just a medium size delivery wagon; two horses, one is a grey horse and the other is a bay, and they weigh about 1000 pounds apiece. I am familiar with the highway crossing across the Riverton Crossing, and have been familiar with it for more than 7 years. I have been over this road once a week, up and back as a rule unless there was a holiday came on my delivery date. For 7 years, or probably a little more than that, I have been over it once a week, and during that time have become familiar with the traffic that passes over it. There is almost a continuous traffic there during the day, and it was fully as much in July, 1912, as any time before or since, I think. I didn't see any difference. It doesn't vary much. And that congested traffic has existed ever since I have been going over the road. I must have been over that crossing between 700 and 800 times."

Q. Do you know whether or not there is any danger to travelers in approaching and going across that

crossing? (Counsel for defendants objects. Objection sustained. Exception noted for plaintiffs.) "I have stated that in July, 1912, and for some time prior to that it was almost a continuous traffic over that thoroughfare during the day time. There is teams there backwards and forwards almost all the time. At that time I think there were 4 trains a day passing over the tracks—two single cars and two double car trains and then sometime a freight train in between them. The single cars were known as the flyer or limited. By that is meant that it does not stop between Seattle and Tacoma as I know of; maybe it stops at Auburn. I don't know as to that. I never rode over it, but it makes no stops at the stations this side of Kent. The rate of speed that those limited trains usually run over this crossing was about 25 or 30 miles an hour. At about 4 o'clock on the afternoon of the day the accident occurred, I was coming home right there just about Rivereon; was approaching the crossing. I saw the automobile that was occupied by some one; I did not then know who it was, but I afterwards found it was the Doctor. They passed me somewhere near where Dr. Brown used to keep his automobile; I don't know just how far that is. Any body that is familiar with the road knows it sits right in the bank on the right hand side as you go South. They overtook me and passed me on the left side. At the time I was traveling about 4 or 5 miles an hour, and the rate of speed that the automobile was proceeding at was probably 12 miles an hour. After they passed me I kept going right

along behind them and I saw the electric car strike the automobile. I was probably 50 or 75 feet from the crossing when the collision took place. I could not tell exactly; I was just behind those people a little ways. I did not hear any whistles from the approaching car. I was right there on the road. I think I could have heard the whistle of the train if any body could. The alarm gong there at the crossing was not ringing. I am positive of that. Several minutes after the accident it was ringing because I stood right under it." (Witness shown plaintiffs' exhibit 6, a photograph showing this electric gong.) "I stood right here just across the street. I just helped the lady up on her feet that was thrown out of the automobile and stepped back a few steps and stood there. It was quite a little bit after that before the gong began ringing; I could not say just how long. I did not look at my watch. The automobile was coming down at a slow rate of speed and the car darted out from behind that hill there and struck them. The front wheels of the automobile stood on the plank that lies on the right hand side of the right hand rail going South. It shoved the tires back from the bottom of the automobile about that far (showing), probably a foot or fifteen inches, and the left hand wheel took up a little sliver in the plank that stood up about that high (showing), at least it was partially took up and stood right that way, and the automobile cramped to the right and ran back and turned a little more than half way round with the end rather turned back up the street. After the

collision the two ladies laid in the street, one across the cattle guard with her head towards the East and her feet a little bit towards the Northwest, the other one laid with her face towards the cattle guard in the street, and the Doctor laid up under the freight shed. The top of the automobile was down so that I could see the occupants all the time, as I was sitting above them in the wagon. The seat in my wagon is so arranged that it is elevated high enough so that I could see over the horses and into the automobile. I was about 50 feet from the automobile when the car struck it, or a little less, I could not tell exactly, but I know I was there almost in a minute with my team hitched and on the ground. The Doctor was killed. He was dead when I got to him. I helped what I heard afterwards was the Doctor's sister—helped her to get up on her feet. The other lady, there was a number of other people helping her so that I didn't need to go there. I did not hear the train approaching." Q. What has been your observation with respect to being able to see a Southbound car on the West track as it approached this crossing? A. I should judge you would have to be within 25 feet of the track at the least calculation to see it. (Continuing) "Because there is a bluff and shrubbery and one thing and another there that obstructs your view, and then the car circles in towards the bank. I could not say positively whether or not it is a fact that if a person stood between 50 and 60 feet west of the track they could see a Southbound train at all times after it left the

Riverton Station; I never took any notice as to that. I have noticed that from that crossing and other places it is nearly impossible to hear where there is a bank or a bluff shields it. I did not hear that day this Southbound car. I have noticed at other times that it has been difficult to hear the train approaching, because I know that I came near driving out there on to the road because I heard nothing; that was before the gong was there." Q. Can one readily hear the rumble of the approaching train? A. I think not. (Continuing) "This is on account of the bluff, I suppose. The bluff diverts the sound Eastward." Q. Have you any personal knowledge, and if so state what it is, respecting this gong that was maintained at this crossing by defendant not ringing as trains approached; which knowledge you acquired before this accident? (Defendant objects. Objection sustained. Exception noted for plaintiffs.) (Continuing) "No flagman or gates were maintained at this crossing before the accident." Q. Mr. East, did you have any personal knowledge of any accidents between travelers and cars or trains of the defendants occurring at this crossing prior to the date of this accident? (Objected to as irrelevant, immaterial and in competent.)

MR. TAIT: I object to that as irrelevant, immaterial and incompetent.

THE COURT: Objection sustained.

MR. HASTINGS: I have some authorities here that it is competent to show that other accidents occurring at a crossing can be shown for the purpose

of showing its dangerous character, and I expect to do that before we are through.

MR. TAIT: Now, before counsel begins I wish to tell the court and I want it to appear in the record, that the way in which the complaint was originally drawn, allegations covering what counsel is now seeking to prove were made and I move to strike those allegations out on the ground that they were irrelevant, immaterial, incompetent and redundant, and the matter was argued before Judge Neterer and Judge Neterer sustained the motion and the allegations were stricken out and an amendment to the complaint was put in here with these allegations omitted. Now the question was plainly before the court and it is certainly the law of the case as far as this case is concerned; if Your Honor will look at the original complaint you will find it.

MR. HASTINGS: That is true, but the court made an error, and it is always the rule that if an error is made, during the course of the trial the court is willing to correct it.

THE COURT: It would lead to confusion if a court of co-ordinate jurisdiction with another started out to attempt to correct mistakes of another judge. Unless your authorities were controlling on this court, it would be my idea that you cannot call upon the defendant to try all these other accidents and show that they did not happen by reason of negligence. I will sustain the objection. Exception allowed.

Objection sustained. Exception allowed.

## Cross-Examination.

"At the time Dr. Rininger was passing my wagon, I was probably 250 or 300 feet, somewhere along there, from the railroad crossing, at the point where the grade begins to slope down toward the track, and I think the automobile was only going between 12 and 15 miles an hour. I could not say exactly. It was running slow. I know that." "If the man who was running the automobile fixes the rate of speed at 20 miles an hour, I could not say whether he was right or I was right. I should judge from the way I was traveling they were going twice or three times as fast as I was. I was going 3 or 4 miles an hour. It did not take it long to pass me. I never operated an automobile. I have probably ridden in one a dozen times. I am not an expert on the speed of automobiles. From all appearances and the way I drove behind it, it was just drifting of its own weight as it got down pretty near the track. It possibly kept up the same rate of speed at which it was going when it passed me until it got down close to the track, but I don't know. I didn't pay any attention to the speed it was going after it passed me. I did not pay very much attention to its speed while it was passing me. I do not know much about the speed at which it was going when it passed me except I know it was not going very fast. At the time of the collision I think I had driven my wagon up to within 50 or 75 feet of the track. I do not remember any other vehicles there at that time. I think I had the only wagon and team. There was

one team on the other side of the crossing just after the accident. He had stopped for the crossing, I think. Of course, I could not see on the other side until after the car passed. That team stopped probably 50 or 75 feet I think from the crossing. I did not pay much attention to it. I could not tell what the wagon was loaded with or whether it was loaded. I think it was a one-horse wagon going South. I mean to tell the jury that when you are within 50 or 75 feet of that crossing you can hear the regular road crossing whistle blown back up there just after it leaves Allentown; my hearing is pretty good. I think it is just as good as any body's. Q. What is it that impresses it on your mind so thoroughly that the electric bell was not ringing as that train came towards the crossing? A. What impresses it on anybody's mind. It was not ringing and that is all there was to it. I stood right there under the bell, and if it had been ringing I would have heard it. (Continuing) "The next time I passed this crossing was the next week on Thursday I think Thursday was my day there; I always went on the same day of the week. I passed there the next week. I went up about 9 to 10 o'clock in the morning and came back at 4, or between 4 and 5. That was my regular trip. I did not notice any trains pass at that time. I do not recollect whether any train was passing the crossing as I approached it on the next Thursday after the accident. I do not think there was any train passing at that time. I passed this crossing just the week before the day of the accident.

As to whether there was an approaching train on the day that I passed the crossing a week previous to the accident or whether the gong was ringing or not I cannot remember. The reason why I do not recollect anything about the week before or the week after and the reason why I am absolutely dead sure that there was no gong ringing at this particular time is because I stood right there under it and was listening to it, and if it had been ringing I would have heard it. If I had been off somewhere else I would not have heard it. I know that there is an electrical contrivance located about 1200 feet North of the crossing called the "cut-in," and that when the third rail shoe on the Southbound train passes over that cut-in, it automatically starts the bell to ringing and that the bell rings from that time until the train crosses the road, and that some 15 or 20 feet on the South of the wagon road there is another electrical appliance that they call the "cut-out," and that when the train passes over that cut-out it stops the bell from ringing. I know that it does not always start it and as far as stopping it, it could not have stopped it if it was not started. I know they don't always ring. I know there is such a contrivance. As the train passes 18 or 20 feet South of that crossing it does not always stop the bell ringing. This happens frequently. I could not tell any particular day because I did not take out my book and set it down. I cannot tell the jury one day when it occurred because I did not take a note of it. I did take my book and set down on the day

Dr. Rininger was killed. This book I left at home. I did not bring this book along at this time because I didn't think of it. It is a little day-book I had in my pocket. I set it down at the time that I got up here. I did not set anything else down in the book. I set it down because I just happened to write it down there is all. I didn't happen to write down these other occasions when the bells were not ringing because it was not necessary. It was necessary to write it down this time because it was an accident. I did not expect to be called as a witness because I heard a long time ago that the case was settled. It was all out of my mind until just here lately. I don't know that I could find this little book. It may be misdisplayed. I can recollect this matter without ever writing it down." Q. How long a time was it from the time you first saw the Southbound passenger train until the collision between it and the automobile occurred? A. Just about that long (witness snaps his hands). It may have been just about that long before the train passed over 20 feet South of the road. It was going at a pretty good speed. The two-coach passenger train came up about 20 minutes later from the North and as it came up the electric bell started ringing, it started ringing some time after the accident. I could not say just exactly how long. I could not say that it started to ring just before the two-coach passenger came down, I did not pay any attention to it. I did not put that down in my book because I did not think it was necessary, but I do recollect that the bell rang after the two-

coach train came down. The two-coach train stood there until I left. There were 4 trains there when I left, probably 20 or 25 minutes after the accident. I mean to say that you have to be within 25 feet of the Southbound track in order to see a Southbound train when it approaches the crossing, but I never paid any attention to it when it was down toward Allentown. In other words if you get farther than 25 feet back from the track there is a point in that curve where the train would pass entirely out of sight. I have stopped there and waited for the train to go by. I never took any measurements to see how far back you would have to stand or how close you would have to be to the track in order to see the train at the extreme point of the belly of the curve. I think it would be about 25 feet. This room is about 50 feet. I don't think you could stand back the length of this room and see the train all around the curve. I have noticed this when I have stood there waiting for a train to go by."

MR. HASTINGS: We now offer to prove by Mr. East, who has heretofore been sworn, that prior to July 25, 1912, other accidents had occurred at this same crossing; that there were several minor accidents, and that this is offered for the purpose of imparting notice to the defendant of the dangerous character of this crossing, so that the defendant with such knowledge of this dangerous character was charged with a greater duty in carefully operating its train across there, and in connection with this offer that there were at least two fatal accidents

at this same crossing before this accident. This offer is not for the purpose of showing that those particular accidents were the result of negligence on the part of the defendant, because that would raise a collateral issue, but for the purpose of showing that it was a dangerous crossing and they had had knowledge of that danger.

THE COURT: Was the ruling of Judge Neterer to the effect that the pleading of it was improper, or to the effect that it raised a collateral issue?

MR. TAIT: His ruling expressed precisely the same thought that Your Honor did, and that was that we would be brought into court here to defend against various accidents which might have been caused wholly through the fault of the person who was injured, and if those things should be proven, in order to keep ourselves anywhere free from blame in the minds of the jury we would have to go into the merits of those accidents. It was to keep out those collateral issues.

MR. HASTINGS: That is true; Judge Neterer based his decision on the ground that it was raising a collateral issue, and for the purpose of determining whether these defendants were guilty of negligence in the other accident. I concede that we cannot do that. We cannot go into the question that the defendant was guilty of negligence in those other accidents, but the fact that there were other accidents is proof of the fact that it is a dangerous crossing and that is an element which must be con-

sidered by the jury in determining whether the defendant should not have maintained a flagman at this time on this crossing.

THE COURT: I feel that I am bound to adhere to my former ruling and sustain the objection to this offer, not only on account of my own reasons but on account of those of Judge Neterer. (Exception noted for plaintiffs.)

ELORA LAMB, WITNESS FOR PLAINTIFFS,  
TESTIFIED AS FOLLOWS:

“My age is 21. I am a chauffeur and mechanic and was such in July, 1912, and am accustomed to driving automobiles. At about 4 o'clock in the afternoon of July 25, 1912, I was standing on the waiting or passenger station of defendants' railroad at Riverton waiting for the Seattle or Northbound train. I saw Dr. Rininger's automobile approaching the crossing. (Witness shown plaintiffs' exhibit 10.) I notice the station in this picture. I was standing on the platform at about the point marked “A” in pencil thereon. I should judge that the automobile was approaching the crossing at a rate of speed between 12 and 15 miles an hour. It was being driven by Mr. Brodnix.” Q. Did you observe whether or not he made any effort to see whether a train was approaching? A. I seen him looking both ways. (Continuing) “At that time I could and did, from my side, see the Southbound car on the West track of the defendants' line. It was at the rock quarry when I first saw it just between Allen-

town and the rock quarry, which is a point North of the Allentown Station, and I continued to observe it as it proceeded Southward and observed it until it struck the auto. From where I was on the platform I could see it during all the time that it was going South. It was running at a rate of speed between 45 and 50 miles an hour. It seemed to slacken just a little bit, not much, as it approached the crossing. I did not hear any whistles blown on the train, and I was watching it all the time. I am sure I could have heard the whistles if any had been blown on this train. There was nothing the matter with my hearing. It was all right, and there was no defect in my vision or means of seeing at the time. The whistle was not blown. I did not hear it at all. I am sure I could have heard it if it had been blown because I have heard them lots of times there. The electric gong maintained at the crossing did not ring at that time. I was about 75 feet from it. After the collision when the next flyer came through it rang. It rang regularly and did not ring fast—you know, now and then a tap. At that time I had been out home to see my parents who lived out beyond there at that time, and continued to live there until about five months ago. It was a frequent occurrence for me to go out there to that station. I went out every week. At that time I was familiar with the driving of automobiles. The automobile was approaching the crossing at a rate of between 12 and 15 miles an hour." Q. Now, from your knowledge and experience as an automobile driver, would you

say that that was a reasonable or an unreasonable rate of speed for an automobile to approach that crossing? (Mr. Tait: "I object to that; I think he can testify as to the rate of speed it was moving, but what is a reasonable speed in approaching a railroad crossing is always dependent on the peculiar circumstances of each particular case, and that is a question for the jury to decide.") Objection sustained. Exception noted for plaintiffs.) (Continuing) "After the accident I remained there about three-quarters of an hour and while there other trains came in. The bell rang irregularly when the other train came. There was no difference in its ringing between the approach of a Northbound train or a Southbound train. It was just the same."

#### Cross-Examination.

"I have been a chauffeur about six years driving somebody else's machine. Am now 21 years and began driving at 15 years. I worked for the Winton people, R. H. and H. Graves, the Seattle Garage Company, the Junction Transfer Company, Mrs. D. W. Walker and Mrs. Agnes Stimson. Am now working for the Junction Transfer Company in the transfer business, driving and taking care of trucks. I knew Mr. Brodnix. I met him there in the Sterns Garage probably a couple of months before the accident, and have known him fairly well since that time. I do not see him very often because I am on the other side, on the West side nearly all the time. I mean by the West side, over in West Seattle. That

is where our transfer office is. He and I are quite friendly. We have not talked over this accident many times. I have never talked it over with him. Mr. Brodnix has never discussed this accident at all at any time with me. He and I never did. I never talked with anybody about the accident only I told my people about it. I told my friends and my parents. That is all I ever told. At the time the Rininger automobile was approaching the track I was standing on the East side of the track, which gave me an opportunity to see the train at every point as it came around the curve because I was standing on the inside of the curve. I could also see down the road for a considerable distance and see the automobile coming. A Sterns automobile weighing 4500 to 5,000 pounds running at the rate of speed of this machine I do not believe, under an emergency stop, could be stopped under 20 or 25 feet. I think 20 or 25 feet is the least distance you could stop an automobile running at 15 miles an hour on that road, which is a down grade. If it was running at 12 miles an hour you could stop it within 15 feet. This automobile was coming almost directly toward me in a kind of Northeasterly direction, in the general direction in which I stood. It is a good deal harder to judge the speed of an object moving toward you than if it is moving past you. I think I was in a position to exercise good judgment as to the rate of speed at which the automobile was moving in view of the fact that it was coming right towards me. The train appeared to slacken just as it got North

of the big bend, the biggest bend in the track, there about 400 feet North of the crossing. It then slowed down just a very little. I should think the train was moving at the rate of 40 miles an hour when it actually struck the automobile. I saw the wheels on the automobile skidding. They skidded between 20 and 25 feet."

#### Re-Direct Examination.

"The Junction Transfer Company's office is on 9th Ave. and California St. in West Seattle. Most of my work is over there. The train that set the bell in motion immediately after the accident was the flyer which came from Tacoma coming North. It was at that time that the bell did not act vigorously." Q. Did you, within a short time previous to the accident referred to, ever notice or observe any defective ringing of this bell, this gong, at the crossing as the trains approached? (Objected to by defendant. Objection sustained. Exceptions noted for plaintiffs.)

MRS. OLIVE RININGER LYFORD, WITNESS FOR PLAINTIFFS, TESTIFIED AS FOLLOWS:

"I am a sister of Dr. Rininger who was killed. At the time I was in the right hand back seat of the automobile just back of the chauffeur as the auto was approaching the crossing. Miss Davis occupied the other seat. She is now dead. We had been to Kent, and were on our way back. Just before we got to the crossing at Riverton, the Dr. was turned talking to Miss Davis and me with his face towards

us. He was occupying the front seat on the left side turned toward the chauffeur. I can't say how long he continued in this position, because we were talking quite a while, but he occupied this position until the driver put on the brakes. I have no judgment of distances whatever, and cannot say how far that was from the crossing, but I should judge we were just about at the top of the hill. I remember the store that is out there just West of the tracks. I can't say it was before we reached the store. After the chauffeur applied the brakes, the Dr. turned and looked both ways, that is, North and South. After that he did not turn back to us or speak to Miss Davis or myself. His face was not turned towards us at all after that. He appeared to be giving some attention to ascertain whether a car was approaching or not when he turned from me and looked both ways. After he turned, I think Miss Davis and I went on talking. I saw the car that struck the auto as it was approaching, but after I saw it it was so quick there was not time for a word or anything. We were right close to the crossing. When the electric car came in sight, the chauffeur made an effort to stop the automobile. From the jolt that we got before the train struck us I should say that the automobile had come to a stop. I heard no whistles from the approaching train and heard no signals whatever from the gong ringing. When the car struck the auto I was thrown. My recollection of events occurring after that were very vague, because I was bruised badly. When Miss Davis and I boarded the

train to Seattle, I remember of hearing a gong, but before that I cannot say. Of course, everything was in confusion. I was bruised from the accident.

Cross-examination.

Mr. Tait: "Mrs. Lyford, there is one point that is not quite clear to me; I understood you to say that Dr. Rininger had turned partly around in his seat so as to be able to talk to you and Miss Davis, and that he kept up that position and carried on the conversation with you and Miss Davis until the chauffeur applied the brakes; now when you speak of the chauffeur applying the brakes, do you mean that he had applied the brakes just as the train hove in sight, say 20 or 25 feet? A. No, sir. It must have been at the top of the grade. It was long before we saw the train. (Continuing.) "I can't say as to the distance, but it was as we were coming to the grade. After we reached the grade and were coming down the grade towards the track, the Doctor turned around and faced toward the front of the automobile, and my recollection is that he looked in both directions. I am no judge of distances, and I can't say how far we were from the track when I first observed the Doctor looking towards the North." A. Well, did not the train come into sight very quickly after you saw him looking towards the North; wasn't it just a sort of momentary thing? A. As to that I do not remember now. (Continuing.) "I saw him nod his head as a signal to the chauffeur to proceed. I cannot recollect how far that was from the track.

I was accustomed to riding with the Doctor frequently. I did not become accustomed to estimate the speed of automobiles unless I was in the front seat and could see the speedometer. I had no idea whatever of the speed. I could not testify how far we were from the track when we first saw the train, because I do not know but the collision occurred almost instantly after I saw the train. There was not time for a sound from any of us. I can't say that Miss Davis was talking to me continuously or that I was talking to her continuously all the way down the grade, but I know that we were in conversation at the time because her head was turned toward me. It was on my left. I was paying no further attention to the fact that we were approaching a railroad track than a third or fourth person would in a machine. I had perfect confidence in the Doctor, and had no reason to do anything else but to rely upon the Doctor taking the necessary precaution to make the crossing in safety, but my attention was directed to the subject of the electric gong signal ringing before the accident, as it would to anyone who would be in conversation with another. I heard no gongs ringing and saw no signals whatever as we were approaching the crossing. Miss Davis and I kept up the conversation until the train came in view. It is possible that the train may have blown a whistle a quarter of a mile or a half mile up the track and I did not hear it, and perhaps the electric bell might have been ringing without my being conscious of it."

## Re-direct Examination.

"At the time my hearing was all right and so was my sense of sight, and as we were approaching the crossing I was aware of it."

ANNA M. GOOKSTETTER, WITNESS FOR PLAINTIFF, TESTIFIED AS FOLLOWS:

"I am now private secretary to Dr. Lamson, and was private secretary for Dr. Rininger in July, 1912. I had been so employed by Dr. Rininger since September, 1909. I had, as his private secretary, charge of his books of account. These books show the charges for his services made in his profession. My employment was in his office and I was therefore personally familiar with his business affairs and I was and am familiar with the amount of the charges made by the Doctor for his professional services during the years 1910, 1911 and up to the date of his death in 1912. The charges for his services, during the year 1910, were over \$56,000. I have a little book that I put down every month the amount of the work done and the amount of cash received, which I have with me. These items were put down at the close of each month. (Witness hands the book to counsel for defendant.) These are the same pages that I showed to you in the office the other day, and the entries are made in my own hand writing and were taken by me from the entries made on the ledger and totaled them at the end of each month. Refreshing my memory from this book, I find that the exact total charges made by Dr. Rininger for the

year 1910 was \$57,168.30, and the total charges for his services in his office during the year 1911 was \$56,518.15, and the charges for his services for the year 1912, up to the date of his death in July was \$38,418.25. The amount of actual cash that was actually received by the Doctor for the year 1910 was \$36,193.94, and the cash taken in by him for the year 1911 was \$36,196.11, and up to the date of his death in the year 1912 it was \$25,743.30. I do not know the exact amount that has been collected on these accounts since his death by his executors, but approximately \$20,000, and collections are still being made on the accounts."

#### Cross-examination.

Q. Now, Miss Gookstetter, you have stated that in 1910 you actually collected something over \$36,000; what were the expenses for that year in connection with the Doctor's business? (Objected to as immaterial. Objection overruled. Exception noted for plaintiffs.) (Continuing.) "The expenses from January 1, 1910, to January 1, 1911, were \$13,536.71. My books do not show the difference between these two items—the net cash. His expenses for 1911 were \$13,617.97. I have not got his expenses during the year 1912 up to the date of his death, but they were just about the same. The average would be a little more than \$1,000 a month. I have stated that the expenses for 1910 were in round numbers \$13,500, but in this account I have not allowed an item of \$3,344 for discount on bills. The

instrument account was \$1,174. The discount account was simply this: If a man could not pay only so much, why what was left of his bill unpaid was put in the discount account. The Doctor would frequently receive sums less than he actually charged on his ledger, and would give a man a receipt in full, and in 1910 items on that account amounted to \$3,300 and some odd dollars. This was not included in the expense account of \$13,500. The books show the discount account was \$3,344; instruments, \$1,174; medicines, \$478; automobile expenses, \$3,116; general expenses, \$8,966. And for the year 1911 his books show discount account, \$4,701; instruments purchased, \$573; medicines purchased, \$418; automobile expenses, \$3,489; general expenses, \$9,098, and these would total \$18,280. And up to the time of his death the books show the discount account for 1912, \$3,775; instruments, \$249; medicines, \$187; automobile expenses, \$2,213; general expenses, \$4,869, and these would total \$11,295. I have had something to do with his books since his death, and know that his estate has been finally distributed."

#### Re-direct Examination.

"During the year 1911 the Doctor was in Europe from June until September, so that he was out of his office four months of that year. The instrument account included anything in the way of appliances and surgical instruments that were used by the Doctor in his business, and this applied to the instrument account for the three years. The item

for instruments is included in my former statement of the expenses for each year. The Doctor purchased a new automobile in the Spring of 1910. The Doctor was away from his office for a month or six weeks in 1910. The discount account for the year 1910 was discount on bills earned in previous years, and the item of \$3,344 discount made in 1910 was for services rendered in previous years. The item of \$9,980, general expenses in 1910, does not include the automobile account nor his household expenses, and the household expenses were not included in the general expense account of the succeeding years, but this item of \$9,980 is a part of the aggregate item of \$13,538 for 1910, and the general expenses of the succeeding years is a part of the total expense heretofore given by me, and the instrument account is a part of the item of \$13,617 for the year 1911, and the same is true of the year 1912, and the total expenses given by me included all these different items excepting the discount items."

O. C. THOMPSON, WITNESS FOR PLAINTIFF,  
TESTIFIED AS FOLLOWS, TO-WIT:

"I am in the grocery business at Riverton. There are three grocery stores at Riverton. There is a machine shop and just across the river from Riverton there is another little grocery store. In the year 1912 there was also a meat market there. I have lived there 8½ years and am familiar with the place known as the Riverton Crossing. (Witness shown plaintiffs' exhibit 1.) This picture

shows the crossing which I have referred to. My grocery store is not the one shown in the picture. That it owned by Mr. Rosenberg. I am familiar with the amount of traffic that passes over that crossing and have been familiar with it for 8 years, and in July, 1912, there must have been a rig passing the track every 15 minutes at least, and this condition has continued in the summer time especially on Sundays. It is that way all day long, and the same condition existed on week days for 2 or 3 years." Q. Do you know whether or not any accidents had occurred at this crossing by collision between travelers, vehicles or automobiles prior to July 25, 1912? (Objected to by defendant as irrelevant, immaterial and incompetent. Objection sustained. Exception noted for plaintiffs.) (Continuing.) "There was no flagman at the crossing in July, 1912. (Mr. Hastings: It is understood that the objection made by defendant to the proof offered by this witness and also by Mr. East goes to the materiality of the substance of such testimony and not to the form in which I have asked it.)

**H. D. HANFORD, WITNESS FOR PLAINTIFFS,  
TESTIFIED AS FOLLOWS, TO-WIT:**

"I reside in Seattle; am a civil engineer, which occupation I have followed for 18 years, and have lived in Seattle since October, 1899; left Seattle in November, 1902, and returned again in January, 1905, and have resided here continuously since. I

was the chief engineer in charge of the work of the construction of the tracks of the Puget Sound Electric Railway, which was then called the Seattle & Tacoma Interurban Railway. I have general knowledge of the Riverton Crossing, which is the crossing just South of the county bridge. This crossing is about 4 miles South of Spokane Ave."

Q. Was there any discussion at the time of the location and building of those tracks, between you and the officers of the company, respecting the character of this crossing; whether or not as located it was or would be a dangerous crossing? (Mr. Tait: I object to that as irrelevant, immaterial, incompetent and certainly not supported by any allegation in the pleadings. Mr. Hastings: We allege that this was a dangerous crossing. The Court: That fact, whether it was a dangerous crossing or not, depends primarily on the surroundings and conditions rather than any conversation had with the parties. The objection is sustained. The court is going to rule that the conditions that were open and plainly visible you do not have to bring actual knowledge or notice to them the same as you would concerning some latent defect or danger, in which case this might be permissible.)

Q. Do you know whether or not, Mr. Hanford, from your knowledge as an engineer and also the experience you had in laying out this track, whether or not the crossing there could have been constructed so as to have eliminated, or at least greatly reduced, the danger of this highway crossing? (Objected to by defendant.

Objection sustained. Exception noted for plaintiffs.) Q. Do you know whether or not there was a plan considered at the time these tracks were laid out and constructed across this crossing, by which a different method of construction of tracks could have been carried out and thereby reduced the danger to the traveling public in crossing those tracks at that time at that point? (Objected to by defendant. Objection sustained. Exception noted.)

MRS. NELLIE M. RININGER, ONE OF PLAINTIFFS, BEING SWORN, TESTIFIED:

“I am one of plaintiffs in this action, and was the wife of Dr. Rininger at the time of his death. The Doctor left one child surviving him, whose name is Helen Dorothea Rininger, and she was 14 years of age on the 2nd of February of this year. She has a guardian. (Plaintiffs offer certified copy of so much of the probate records of King County, Washington, that shows that A. S. Kerry is the duly appointed, qualified and acting guardian of said Helen Dorothea Rininger. The same received without objection and marked plaintiffs’ exhibit 13.) “Each year the Doctor went to New York or to the Mayo Brothers. The Mayo Brothers are surgeons that I think are pretty well known in the Northwest. They are at Rochester, Minnesota, and are the owners of the Rochester sanitarium and hospital. I think the Mayo Brothers are considered the best surgeons, at least the Doctor considered them the best surgeons, in the United States, and each year

he would take his vacation and go either to New York City to take some special work or to the Mayo Brothers to take up some special work. I know at different times he took up different things. One time he went to take up kidney work and another time goitre—each time he went to take some special subject. Each year he took up something different. I don't know how long he was absent in the year 1910, but usually he was gone about 10 weeks or twelve weeks. In 1911 he was absent in Europe; was gone from the 25th of June until the 1st or 2nd of October that year. He was not absent in 1912. He had purchased two automobiles since the beginning of 1910 up to the time of his death. The Stearns auto was purchased the spring of 1911, and the other the year before."

#### KENT BRODNIX RECALLED FOR FURTHER CROSS-EXAMINATION BY DEFENDANTS.

Q. You stated yesterday that during the 2 or 3 months prior to this accident you had passed over the Riverton crossing going in both direction, that is to and from Seattle? A. Yes, sir. (Continuing.) "It is a fact that in coming towards Seattle, the county road, as soon as it crosses the tracks, turns very abruptly almost at right angles to the North and comes on in toward Seattle. Just on the Easterly side of the track the turn is very short. After you get across the tracks coming in towards Seattle, the county road follows alongside the railroad track all the way up to this bridge crossing the

river. I could not say how far the bridge is North of the crossing, but it is something like a quarter of a mile North of the crossing. I do not think the county road makes the same curve in towards the foot of the bluff that the railroad tracks do. I do not mean to say that the county road runs perfectly straight from the time you get across the tracks until you get up the bridge. It makes some curve in to the left as you are driving North and at no time are you very far away from these railroad tracks as you pass from the crossing up to the bridge."

Q. Then as a matter of fact, before this accident you knew that the tracks did curve in towards the foot of the bluff North of the crossing, didn't you?

A. I knew they curved, but the extent of the curve I had no knowledge of at all. Q. You said yesterday I think something about being able to see the tracks up near Allentown or in that vicinity, when you were back 50 or 60 or 75 feet from the crossing; did you mean to say that you could see the rails of the track that far? A. You could see some of the rails, not all of them. (Continuing.) "I cannot say that there is a board fence between the county road which runs along on the Easterly side of the railroad tracks and the railroad tracks and that on account of the curve in the tracks that board fence shuts off the view of the rails until you get very close to the tracks, because I don't know. I could not say how long before the accident it was that I passed over the crossing. It might have been within a week or ten days. I could not say what time

at all. (Q. by Mr. Hastings: One traveling along on the highway from the bridge towards the crossing by the side of the curve, opposite the tracks, would they be able to determine whether or not the car on those tracks was visible from the highway West of the crossing? A. No, sir. Q. What knowledge had you before this accident that the view of the West of the track, or the view of an approaching car bound Southward on the West track, was not visible after you passed 50 feet West of the crossing? A. I did not know that that was the condition.

**NELLIE M. RININGER, RECALLED, TESTIFIED AS FOLLOWS, TO-WIT:**

“The Doctor was born on March 7, 1870, which would make him 42 years and 5 months at the time of his death. (It is admitted by defense in open court that according to the American Insurance Mortality Tables that the expectancy of life for Dr. Rininger would have been 26-34 or 26 1/3 years at the time of his death.) (Continuing.) “At the time of the Doctor’s death, his health was never better. His physical condition was good. His sense of hearing was very good; I always considered it much better than mine, and his sense of seeing was very good. He didn’t wear glasses at all. He had obtained life insurance in the month of June previous to his death.”

**PLAINTIFFS REST.**

Thereupon the defendant, Puget Sound Trac-

tion, Light & Power Company, moves that the case be withdrawn from the consideration of the jury, and that a judgment of non-suit be directed in its favor on the ground that it had been in no way connected with the ownership or operation or management or control of the Interurban Railroad and that no negligence on its part had been shown. This motion was granted as to this defendant without objection. Thereupon counsel on behalf of the Puget Sound Electric Railway Company moved that the case be withdrawn from the consideration of the jury and that a judgment of non-suit be directed on the ground that no sufficient case had been made by the plaintiffs to go to the jury, as no negligence had been shown or proven, and for the further reason that it affirmatively appears from plaintiffs' own testimony that both Dr. Rininger and his chauffeur, who was in charge of the machine in which he was killed, were guilty of contributory negligence as will preclude their recovery as a matter of law. The Court: The motion will be denied, but I don't want to be misunderstood in the ruling I make. So far as the evidence concerning the negligence is concerned, the Court rules that there is sufficient evidence to go to the jury. So far as the motion has been interposed, and particularly argued on the question of contributory negligence on the part of those in control of the automobile, the court makes its ruling because the motion is not now to be considered by the Court, contributory negligence being a matter of defense, and the rule being that

the motion is only to be made at the close of the case for a directed verdict. (Exception allowed to defendant, with leave granted to renew its motion at close of the case.)

F. G. WOODWORTH, WITNESS FOR DEFENDANT, TESTIFIED AS FOLLOWS, TO-WIT:

"My business is that of a draftsman; am employed as such in the office of the civil engineer of the Puget Sound Electric Railway, and have been so employed for 3 years. Have recently made measurements showing the distance between different points at what is known as the Riverton Crossing on the line of the Interurban tracks South of the city. I have examined defendants' Exhibit A for identification, and will state that it was made by me from actual surveys and measurements taken on the ground and is drawn to a scale of one inch to ten feet. On the drawing there are certain irregular curved red lines which indicate the different elevations of the ground. They are what we call the contour lines. They show the different elevations at different points along the side of the bluff, which bluff is to the North of the county road and West of the railroad. The parallel lines that cross the county road indicate the rails of the track. These represent the rails of the Southbound tracks and the red line between these rails indicates the center line of the right of way, and the center line of the present traveled roadway is indicated by those dashes as they cross the track. In measuring the elevations

of the bluff or embankment to the North of the county road and West of the tracks we assumed the rail of the South bound track as 100, then the first contour is 105 and up here next to this residence 37 feet above is X. I mean by saying that 105 feet is the first contour that at the red line marked 105 that would mean that that follows the course of the bluff 5 feet above the level of the tracks. Taking the central point where the county road crosses the tracks, the 5-foot elevation would fall approximately 50 feet from it. This red line here (showing) means that the elevation is 100. This means that the line bears along on the level West of the track; for a distance North of the county road and West of the tracks the land is flat and gets no elevation at all for about 30 feet. The building marked 'freight depot' is Southwest of the tracks or South of the country road. The width of the platform in an Easterly and Westerly direction is 16 feet and is about 6 feet from the track. The distance from the center of the Northerly end of that freight platform to the Southerly portion of the traveled roadway is about 10 feet. On the map here is a building marked J. J. Rosenberg's general merchandise indicated by shaded line, and extending in a North-easterly direction from that is an unshaded line which represents the platform, which is 15 feet wide, and the distance from the Westerly edge of the platform to the first rail of the South bound track along the roadway is 90 feet. I have made computation to determine what the grade of the travel roadway

leading towards the track in a Northerly or Easterly direction and for about 30 feet it is practically level and from there on for about 300 feet it is about 4 per cent. I have marked here on this map "Warning Bell." This is an automatic bell that has six red lights on it and it is on the top of the steel post or cast-iron post. This bell is operated by a cut-in, a rail which is about 1,240 feet to the North, and would be operated by a train going South, and as the train went South it would cut the bell about 20 feet South of the crossing. This bell is located about 10 feet West of the track and about 25 feet North of the center of the county road. I only know the distance between this pole here on the platform and this one here (showing) which is 140 feet. I do not know the distance between the poles North of that. At a point North of the county road and directly West of what is parked 'passenger platform' there are two lines running substantially North and South intersected by cross marks, which represent fence line. These fences are between the roadway. This roadway is for the people. It is not for teams, because it is too steep there. It is a sort of traveled path for people living in that vicinity to go up and down on foot. There are two objects marked on the plat as 'residence' to the North of the county road and to the West of the track, which are approximately 155 feet West of the tracks and about 37 feet above the tracks." (Witness puts an arrow on the map to indicate the points of the compass.) (Continuing.) "As the county road crosses

the railway tracks to the Easterly side it turns Northeast and runs in a Northeasterly direction almost parallel with the railway tracks for a cut 100 feet North of the Riverton Crossing. I cannot tell the distance between the Easterly edge of the P. S. E. right of way and the Westerly edge of the county road. Between the right of way of the railway company and the county road North of the Riverton Crossing there is a fence. I do not know that this fence is on the boundary line of the county road."

#### Cross-examination.

"The distance from the West rail of the West track to where the first red line intersects the South side of the macadamized highway is 23 feet, and the distance from the obtuse-angled platform of Rosenberg's store to the warning bell is 87 feet. South of the passenger station the map shows that the West boundary of the right of way is 43 feet West of the center of the track, and the East boundary is also 43 feet, and part of Mr. Rosenberg's building projects on the right of way. This map was made February 9, 1914. This map shows all of the houses in that section West of the crossing that you can see. There are other houses a little farther to the Northwest over the hill, but in sight of the track. There are also other houses a little farther West and in sight of the track. There is a garage apposite the county highway about 196 feet from the track, and there is a house right opposite it on the hill West of it. These checked portions at

each end of the place marked 'crossing' represent cattle guards. They are 9 feet wide. The passenger platform is 62 feet long North of the bell. On the map are the figures 31.50 which are on the black line extending West from the North of the cattle-guard, which is 95 feet from the black line extending West from the North of the cattle guard, so that at a point 95 feet North of the cattle guard the edge of the bluff is  $31 \frac{1}{3}$  feet above the tracks, and as you go farther North the bank is higher. I did not take the elevations from there down. I just took the elevations there up; as far as it is on the map they are correct. This map purports to show a distance 250 feet North of the cattle guard. The little crooked oblong red line represents a depression. The distance of the first elevation line from the North line of the macadamized road is 20 feet from the West rail. The fence intended to be represented from the Northwest corner on the West right of way line is a board fence about 5 boards high. The side of the hill is just earth. There are some brushes on the side of it, not very many. I didn't notice any ferns or anything else on it in February. The distance between the West right of way and the next line is 15 feet, which is used for a foot path."

#### Re-direct Examination.

"The figures 31.50 is the distance between the center line of the track and the old fence that runs along the bluff, and the figure 14 on the same line represents 14 feet from the center of the two tracks;

that is from one track to another. And the figure 10.5 is from the center line of the Easterly track to the fence between the county road and the track. And the figure 24 is from the fence that is between the tracks and the county road and the fence that runs along the river. That would be the width of the county road. The Westerly bank of the river represented on this map is not sufficiently correct so you could put your rule on and scale the distance, but it is approximately correct, and the distance from the East side of the county road to the West edge of the bank is approximately 12 feet. The distance between the line that I have indicated as the center line of th company's right of way to the fence along the Westerly side of the county road is 17.5 feet."

ARTHUR L. ADAMS, WITNESS ON BEHALF  
OF DEFENDANTS, TESTIFIED AS  
FOLLOWS:

"I live in Tacoma. Am superintendent of ways and structures of the Puget Sound Electric Railway Company, and have been such for two years, and was familiar with the county road crossing at Riverton in July, 1912, and at that time about 400 feet South of the crossing was a sign reading, 'Caution, 300 feet to Railroad Crossing.' This sign was about 12 inches wide and had the caution sign of 7-inch letters and the '300 feet to Railroad Crossing' was about 3-inch letters. Up until August, 1911, this sign was placed on the Northwest side of the road.

About the 20th of August it was changed to the Northeast side, which would be on the right hand side as you drive towards the tracks or Seattle. It was about the same distance from the tracks, that is 300 feet from the crossing, when it was moved over to the right hand side, and this sign was on the right hand side of the road on July 25, 1912, and had been there for about a year. There was also an automobile sign on the same pole. It had a symbol to indicate the railroad crossing, with 'Danger, Railroad Crossing,' and that was there July 25, 1912. On the electric bell post at that time was a crossing sign that was a cross; the sign itself was about 6 feet long and it said 'Railroad Crossing,' and above the crossing sign was the electric bell that operated every time the train approached within 1,100 or 1,200 feet, and the bell continued to operate until the train had crossed the county road crossing. On one arm of the cross board sign, attached to the electric bell post, was the word, 'Railroad' and on the other arm was 'Crossing.' It formed a cross. This would be on the left hand side of the county road as you drive toward Seattle, and approximately about 10 feet from the West rail. This bell would start to ring by the Southbound train when it got within 1100 or 1200 feet of the crossing, and the train would cut out the bell when it ran 20 feet South of the crossing or West of the crossing, or 20 feet on the right hand side of the county road. The North bound train would also set the bell in motion when it was 1100 or 1200 feet East of the

railroad crossing towards Tacoma and the North-bound train would cut it out about 20 feet North of the crossing. If the Soundbound train should cut the bell in and stop on the North side of the county road, the bell would continue to ring and would continue to ring until the train passed over the cut-out."

Cross-examination.

This sign that I have been testifying about is accurately shown in plaintiffs' exhibit No. 7. There is another sign on the other side of the road but none other at the electric bell point. This gong was set in motion by the passage of an approaching train or car and the car always sets the bell in motion. When the thing was first installed, I believe it failed once or twice that I know of. We had no trouble with the working of the bell in 1912, not to my knowledge. If the bell had not operated or had operated irregularly it would have been called to my attention. It would be the trainmen or the linemen who would usually call it to my attention, and if they failed to call it to my attention I would not know that it was not working correctly. The linemen themselves might make adjustments if the bell was not working correctly. I never knew it to happen that it did not work correctly. It usually comes to me. I consult linemen and send them to the job. It has been the rule when the bell was not working properly for the linemen or the trainmen in each instance to report it to me. I am sure of that." Q. What was the necessity of any such rule if it never

gets out of order? A. It very seldom gets out of order. (Continuing.) "If it got out of order the quickest way to get action was to report it direct to me. It very seldom got out of order. When it was first installed I think we had two occasions that it stopped, and it was installed in the Fall of 1910 or Spring of 1911. I do not recall the exact date. It has not been under my supervision since September or December, 1911, so that I did not have anything to do with it after December, 1911." Q. I understand by that, then, you would not know anything about the condition of the operation of the bell after that time? A. No, sir. (Continuing.) "It was when the bell was first installed that I had charge of it, and later I went into the engineering department, and it was turned over to the line department, and after December, 1911, if it got out of repair, it would be handled in the same way. I think the linemen took care of it after that. That is the linemen on the job."

Q. As a matter of fact it would not be reported to any one unless it was in a serious condition? A. I do not know how it was handled after I left the department. (Continuing.) "This sign out on the county road is placed about 300 feet West of the track and it says, 'Caution, 300 feet to railroad crossing.' This is on the South side of the track just as you get about to the top of the grade. An automobile club sign of warning is on the same pole at the present time. I am quite sure it was there in July, 1912. I first saw this sign saying '300 feet'

when I came into the employ of the company in July, 1910. At that time it was on the other side of the street, and I changed the location to the opposite side of the road in August, 1911."

Re-Direct Examination.

"The change was made under my direction. I saw it made. (Witness shown defendants' exhibit B). I recognize the location, and that is the exact location of this sign, which I have been testifying about. The other sign, "Danger, Auto Club of Seattle," is the other sign that I have referred to. I am not sure that this last sign was on the point shown in exhibit B on July 25, 1912, but I think it was there. I moved the caution sign over on the other side before July, but I had nothing to do with the automobile sign. I am sure that the caution sign shown in exhibit B was there on July 25, 1912. The same boards and the same painting shown in this picture were put there in 1911 and have not been changed since."

**MRS. AMELIA NELSON, WITNESS FOR DEFENDANTS, TESTIFIED AS FOLLOWS:**

"I have lived at Kent 7 years; am married, living with my husband. I recall the occasion of the automobile accident in which Dr. Rininger lost his life at Riverton on July 25, 1912. At the time I was on the Interurban train that struck the automobile, sitting in the first cross seat back of the smoker, which would be toward the forward end of the car on the right hand side; was sitting next to the win-

dow which was open. I saw the automobile before the collision. I think the train that we were on was about 25 feet from the crossing when I first saw the automobile. The auto was standing still. It seemed to be standing still right at the tracks. I did not see the automobile moving toward the tracks. It was standing still when I saw it. The train was moving. I could not say whether the auto was moving but it looked to me as if it was standing still. As we approached the crossing the electric gong was ringing. There is no doubt in my mind of that fact for the reason that I had a little girl with me and she was sitting next to the window when we got on the car—as children will, she wanted to sit next to the window, and after we had been going a ways she seemed to be frowning, so I asked her whether she did not want to change her seat, and she said she did. This girl was about 4 years old. I sat next to the window, and just as we were about nicely settled I happened to look out and I saw the auto, and I thought I would look closely to see if there was anybody in the auto that I knew, and just as I was taking a good look out that way, this electric bell rang quite closely to the car and for just an instant it kind of—well it—I didn't get frightened, but it startled me, and of course I just moved a little ways from the window, and of course I was anxious to see who was in the auto, but I never saw, because I saw the auto turn and at the same instant I saw two forms in the air. It was not very long from the time I first saw the automobile until it was struck by

the car because at the angle I saw it I think the auto was quite close to the tracks, but yet I supposed there were people standing waiting for the car, but I suppose it was about 25 feet, I should judge from where I was sitting. I should say the auto was about 25 feet ahead of me the first time I saw it. I could not tell at what rate of speed our train was traveling. I do not know. After the train stopped I decided to get off and go back and it seemed to me I walked probably 175 feet to the crossing. I got off about 15 minutes after the car came to a stop. When I got back there there was a train there. It was the local that followed the limited out of Seattle and was on the Southbound track. The electric bell was then ringing. I stayed there after the accident until the car that took us on left there. I don't remember just how long it was, probably an hour, as I cannot testify as to the exact length of time. I am not able to say whether the train on which I was riding blew any whistles before it reached the River-ton crossing."

#### Cross-Examination.

"I reside about 2 miles out of Kent. My husband is a farmer and has been for 7 years. I do not now and did not then come to Seattle very often on the Interurban." Q. Now, as I understand you, as you were going along on this car, did you notice this bell ringing before or after you saw the automobile? A. I saw the auto first and as we were just passing that bell it attracted my attention because it seemed quite close—I had never noticed the bell so

close. (Continuing) 'It was just a few seconds after I saw the automobile before I heard the bell ringing. The window of the car was up. It was a warm afternoon. I did not hear the bell ring at Allentown. If the bell rang at any other station before reaching Riverton Crossing, it did not attract my attention. I changed my position with the little girl at Allentown and the train did not stop there, and did not stop any wheres else after we pulled out of Seattle to my knowledge. I think the train stopped about 175 feet from the crossing, but I am not a good judge of distances; when I say from the crossing I mean about the South end of the crossing right from the cattle guard, so that I should think that the train stopped from 180 to 190 feet South of the center of the street or about that. I knew Mr. Overlock was on the train at the time. He also lives at Kent. He was sitting on the other side of the aisle."

#### W. H. OVERLOCK, WITNESS ON BEHALF OF DEFENDANTS, TESTIFIED AS FOLLOWS:

"I live at Kent where I have lived for 25 years, and I am a banker. I recall the accident when Dr. Rininger was killed as a result of a collision between his automobile and the P. S. E. trains at Riverton. At that time I was on the Interurban train that collided with the auto, and I was sitting near the front end about the East side of the car. I recall that the crossing whistle was blown before the train reached the Riverton crossing. It was blown just after we

left Allentown. Allentown is, I should think, about 1,000 or 1,200 feet from Riverton. The whistle signal that was blown was two long and two short blasts, the regular crossing whistle. I do not know anything about the electric bell ringing at Riverton. Prior to this time I had ridden two or three times a week possibly on the Interurban, for a number of years, ever since it had been running, and from that experience I think I have learned to be able to judge with reasonable accuracy the rate of speed that the trains were running, and I should think that this train was moving at the rate of 30 miles an hour when it approached the Riverton crossing, and as it approached the crossing I was conscious of the application of the brakes on the train. I could not say how far we were from the crossing but it was just a short distance, but the brakes went on and the whistles were blown practically at the same time. I do not mean the road crossing whistle, but the motorman evidently saw the auto and began to blow his whistle rapidly. I think we were possibly 40 or 50 feet from the crossing when I felt the application of the brakes on the car, and this quite perceptibly decreased the speed of the train but I could not say to what extent, but so much so that you could feel it all right enough and tell that the brakes had been applied. I should think the train ran a couple of hundred feet after it collided with the automobile. I got off the train and went back as soon as the train stopped. I think I was there about an hour, if I remember correctly, and while I was there

the local train came in from Seattle. I could not say whether the bell rang or not when it came in. I never noticed it. I own an automobile and have been driving it for 4 years, and am familiar with the county road at the Riverton crossing, having driven across it frequently in my automobile. I was familiar with the condition of the road the latter part of July, 1912. This road for 100 to 200 feet West of the track was dry and dusty. So far as I can remember it was so during all the month. I do not think there was any pitch or tar on it to make it slippery. The road was macadamized if I remember correctly either in 1909 or 1910, and the top was nearly all off, very little top left on it. The pitch would be on the top surface. That was nearly all gone. The weight of my automobile is about 3,000 pounds. I am familiar with what is known as a 4-seated Sterns machine. From my experience in handling my own machine, and knowledge of other automobiles, and my familiarity with this crossing I think on a dry day when the road was dry and dusty and as the road actually existed there in the latter part of July, 1912, a 4-seated automobile carrying 4 passengers, weighing between 4,500 and 5,000 pounds, driving toward the track from the Westerly side at 12 miles an hour, such a machine could be stopped within 10 or 15 feet." Q. Taking the same conditions, the same machine, as I have put in my other questions, if in stopping that machine it stopped at a point with the front wheels very near the first rail of the track, but not quite to

the rail, and marks on the ground show that the rear wheels had skidded from 35 to 40 feet, that the rear wheels had locked and skidded along the road for 35 or 40 feet, at what rate of speed, in your judgment, was the automobile traveling when the brakes were applied? (Objected to as irrelevant, immaterial and incompetent and on the further ground that witness has not shown himself competent to testify and also assuming a state of facts which has not yet been proven. The Court: Objection sustained on the latter ground.) (Mr. Tait: I wish to state this: Mr. Overlock is very busy; so far as the element contained in the question relative to the distance of the skidding, I will promise the court that I will introduce that proof later, but I cannot put my witnesses all on at once. The Court: With that understanding the objection will be overruled and the jury instructed that unless Mr. Tait introduced evidence that there were marks on the ground to show that the rear wheels skidded from 35 to 40 feet they will wholly disregard the evidence the witness may give. Exception for plaintiff). "I should say at least 30 miles an hour."

#### Cross-Examination.

"I don't think I ever have driven an automobile that weighed 5,000 pounds. I have driven an automobile with a 60 horse power engine, it being a Winston. I never had any experience in driving a Sterns machine. The machine that I am accustomed to driving weighs 3,000 pounds and driving this ma-

chine at the rate of 12 miles an hour, I can bring it to a stand still in 6 feet, even if I had 4 passengers in it. If it were running 15 miles an hour I could bring it to a stand still in 10 feet. There was no pitch at that point in the road at that time. I was there that day. I saw where the car had slid, and there was no pitch. The natural curiosity of the human race led me to examine the place where the car slid. I saw the tracks where the car had slid in the dust. I think both hind wheels were on the macadam road. So far as the road was concerned at that time there was very little difference. You could not tell whether it was on the macadam or on the gravel road. I think that the marks of the skidding of both hind wheels were on the macadam but could not say for sure. After the accident I saw the automobile and it was standing right along parallel with the track, perhaps 6 or 8 feet from it headed North. The rear end was backed up pretty close to the freight station 12 or 15 feet from it, I don't remember exactly. I think the car was turned nearly around when it was struck and was parallel with the railroad track which would make it facing to the Northwest if the railroad track is headed Northwest, and was 8 feet from the track. I think all 4 wheels were all right. I never paid much attention to the grade. I did not examine the pitch, I was familiar with the road without examining it at that time, and it was my knowledge with the road before that that leads me to say that there was no pitch on it; so that as a matter of fact I did not ex-

amine the pitch at that time. I knew the condition of the road as I traveled it every day practically with my automobile. I got on the Interurban at the station with my daughter, who was seated with me in the same seat, and we were on the right hand side of the train going down. I do not remember whether the window was open, but think not. I do not remember what seat I sat in but it was near the front. I do not remember who sat in front of me or who in the rear or who was across the aisle. I suppose I heard the whistle blow when we were at the Meadows, but I don't remember whether they did or not. I don't remember whether I heard the whistle when we were at Duwamish, and I don't remember whether I heard the whistles when we were at Allentown, but I remember about the particular whistles because of the accident; I have talked to no one about the whistles blowing. I think today is the first time that I have told any one about the whistles blowing." Q. How in the world did they come to subpoena you as a witness if you did not tell them until today? A. Mr. Tait asked me several days ago in regard to it. (Continuing.) "I told Mr. Tait that I had heard the whistle. These whistles blew, I think, after we left the Allentown crossing. I am led to that conclusion because they usually blow for the crossing." Q. Do you have any independent recollection now that they blew before or after they passed the crossing—do you? A. Well, I would know. I should say yes, that they did. Q. Why do you say that? A. On account of the accident, re-

calling it to my mind that the whistles blew. (Continuing). They might have blown before they passed Allentown, and these might have been the whistles that I have in mind. I do not remember whether I was engaged in conversation with my daughter or not. I was not reading my paper. I suppose the car was moving 30 or 40 miles an hour when we passed Allentown. I should say it was about 40 miles. It is possible that it might have been 45 miles. It is possibly true that when a car gets up to a speed of about 30 miles an hour that a change of four or five miles is hardly noticeable, and it is probably true that when one is riding on a car and having no particular object of measuring distances by, it is an easy matter to be mistaken as to the rate of speed of a car, and it might be that I have not accurately estimated the speed at which the car was approaching the Riverton crossing, but I should think it was running 30 miles an hour, although it might have been 35 miles. I don't think it was 40 miles. I did not adopt any means of measuring the rate of speed. I don't remember whether I was watching the objects on the outside or not, and the only means which I had to determine the rate of speed was the fact that I was sitting in the car and it was going along rather rapidly. I don't remember that I was watching objects on the outside. There is one thing in my mind now that definitely assures me that this whistle which I heard blown was after we passed Allentown, and that is the length of time between them blowing that whistle

and blowing the others. What I mean by 'the other whistles' were those that were blown when we came in contact with the automobile." Q. How long a time was there between? A. Just a short time. Q. How many seconds or how many minutes? A. Oh, it was not minutes—it was seconds. (Continuing) "Perhaps 30 seconds. I do not now remember what I was doing after we left Allentown and before we reached the crossing. As near as I can remember it was 30 seconds in the interim. These things all take a little time. These whistles were not blown before we reached the Allentown crossing. I have owned but one automobile. I have had no experience in running any other to amount to anything. I have driven other cars, but not as an every day practice. The engine on my machine is 30 horse power. My testimony with reference to the distance at which an automobile may be stopped is based entirely on my own experience in handling my own machine."

#### Re-Direct Examination.

"When I went back after the accident, I saw the marks on the ground where the Rininger machine had skidded. I did not measure them but I should say off hand about 30 feet was the distance that the machine had skidded, something like that. If a machine had skidded 30 feet with wheels locked, I should think it could not have been going less than 25 miles an hour."

## Re-Cross Examination.

"I think the skid marks were about 30 feet long as near as I can remember. I did not step it off, just looked at it as a man naturally does. I think that a machine that weighs 5,000 pounds and had 4 passengers in it and the rear wheels locked and skidded 30 feet, must have been driven at 25 miles an hour. I have never had any similar experience, but have had experience with an automobile where the wheels were locked and it skidded, as my wife and I were always experimenting with our automobile to find out how quickly we could stop it and how much we would skid at a certain rate, and my machine weighed 3,000 pounds, and we passed part of our time with my machine to see how far it would skid with the wheels locked. We did this once in a while as we would get to talking about it. I never ran my machine at 25 miles an hour and suddenly lock the wheels to see how far it would skid, but have run it at 15 miles an hour and locked the wheels to see how far it would skid, and it would not skid at all at 15 miles an hour. I never ran my machine at 20 miles an hour and then locked the wheels to see how far it would skid. I have run it at 10 miles an hour and locked the wheels to see if it would skid and it would not. If my machine weighed 5,000 pounds I do not believe it would skid running at 10 miles an hour."

Q. So, as a matter of fact, you have never seen any of the results of a machine weighing 5,000 pounds skidding with the wheels locked, have you? A. No sir.

CHARLES E. HILL, WITNESS ON BEHALF OF DEFENDANTS, TESTIFIED AS FOLLOWS:

"I live in Tacoma and have resided there 30 years, and am a lumberman. I was on the train that collided with Dr. Rininger's automobile on July 25, 1912. I was seated either in the second or third seat from the rear next to the window on the right hand side going South. I did not see the automobile before the collision. I could not say whether the road crossing signals were given or not. I did not hear the electric bell ringing. After the collision, I think the train ran about 200 feet before it came to a stop, probably a little more; that is 200 feet South from the cattle guard. I got off the train and went back. I saw some skid marks on the road."

Q. For about what distance did they show on the ground? A. 25 or 30 feet. Q. And they came down to within about what distance of the track? A. I could not say definitely as to that, I would say probably 8 or 10 feet. I should think about the length of the machine. (Continuing) "The road was dry. I could not say particularly as to whether there was any dust or loose sand or anything of that sort on the road. I should not think that there was any pitch or tar on the road; I don't know, I didn't see any. I stayed there until after the local followed from Seattle, and came down to the crossing. I do not recollect whether the electric bell rang or not when this train got in."

Cross-Examination.

"The marks of the skidding were from 25 to

30 feet I should say. I didn't measure it. That is my opinion. I did not step it off. The skid marks were visible as to both wheels. It is my recollection that both wheels had skidded on the macadam; I feel positive of that. I saw the automobile when I went back. In locating the machine on this map as to where it was when I went back I will say it was at the point marked X in lead pencil. The front end of the car was turned toward the freight platform. There was considerable excitement at that time. Dr. Rininger was found to be killed and the two girls injured. I presume there was a good deal of talk among the people. I did not talk much with anybody. I made no attempt to measure the skid marks. I could not say whether the car was standing over the skid marks or not, but I think not. It was a quite warm afternoon. I did not pay any particular attention to the appearance of the surface of the road as to whether it was pitchy or not. I sat in the second or third seat from the rear of the train. I don't think the window was up. I was engaged in conversation. I took no count or measurement of the poles between the car after it stopped and the freight shed. The car might have been as much as 300 feet South of this crossing when it stopped."

A. L. BROWN, WITNESS ON BEHALF OF DEFENDANTS, TESTIFIED AS FOLLOWS:

"I live in Seattle part of the time and then in Thurston County. Seattle has been my home all

my life. At the present time I am farming. Was never in any way connected with the P. S. E. Railway. I was on the train that collided with Dr. Ringer's automobile when he was killed; was seated in the middle section, the third or fourth seat at the right hand side of the car next to the aisle. I think the window at the end of our seat was closed. The crossing signal was blown before we reached Riverton. Q. At about what point? A. After passing the rock quarry. Q. And that would be how far North of the Riverton Crossing? A. I never measured it, but it is only a few minutes' ride; just a short distance, should say a quarter of a mile. Q. Do you know whether or not this electric gong was ringing as the train passed over the crossing? A. I am not positive, I think it was. In riding in a car at least I never have been able to hear a bell until the car gets almost perhaps about to where the bell is located, and then you will hear it. (Continuing) "I think it must be because of the noise of the train. I have noticed it before and since then. It always seems to be the case. I am not able to tell the rate of speed the train was moving as we approached Riverton. I got off the train and went back. I was on the ground when the local came in, and as it came in the electric bell was ringing and rang while the local was there as it came in on the track. The local stopped I should say 50 or 60 feet North of the crossing, and the bell rang until it got off the track again. After remaining there a few minutes it back-tracked and then came in on the East track.

I noticed some heavy automobile skid marks. I cannot tell how long they were. After the train gave its crossing whistle, I noticed a perceptable decrease in speed shortly after, or almost immediately after whistling the 2 long blasts and the 2 short blasts. I felt a slackening of the speed as the brakes were applied. There was a jar when the collision occurred. There was just a few seconds between the time that I felt the brakes applied and the jar of the collision. The train stopped South of the crossing abreast of the third telephone pole; I should say about one-third of the car was ahead of the pole, that is, South of the pole and two-thirds of the car was North of it. There is a telephone pole standing in the Northerly end of the freight platform, and counting that as the first pole I counted two other poles in addition."

#### Cross-Examination.

"I counted the poles at the time. Including the one abreast the car and the one at the station there was 3 posts. I got off the car and went back. The automobile was standing then pointed up hill toward the road leading up the hill, leading to the West. It would be a little bit slanting. The front of it was mostly knocked to pieces, but what was left of it was slanting a little more towards the store, and if the road runs West then it must have been pointing West. I will indicate upon this map where the machine was standing as "B." It was on the edge of the highway at the point marked "B." If the arrow

on the map indicates the North, the automobile would be pointing pretty nearly North, that is it would be pointing a little off to the West. I heard the whistle blow after we passed the rock quarry and heard it again blow when we struck the auto, but I observed no whistles blowing between that time and the time that I heard them up at the quarry. I was riding near the center of the car and near the aisle engaged in conversation along about that time. I was looking past the party I was talking to, and knowing I was coming to a crossing I was looking out seeing who would be there or what would be there. The window was not open. I would say when I got back to the automobile after the accident that it was about 30 feet from the track. Q. You saw it there several minutes—practically all the time you were there? A. I looked at it several times, yes. If one man said it was 8 feet from the track he must be mistaken. The bell was ringing all the time that the local stood there on the track. I heard it ring except when I walked up the track a little ways. The left part of the front of the automobile was all dilapidated. It looked as if it had been in a collision, pretty much knocked to pieces. The rear part of the machine looked pretty good. Everything was stove in in front. The left front wheel I think was broken to pieces but am not positive, although I looked at the machine. I don't think the condition of the machine would have made any greater impression on my mind than the rate of speed when I was sitting in the seat talking to my companion.

I was not paying much attention to the speed we were going. I didn't know it. I knew we were slackening up. I do not remember the whistle blowing at Duwamish or at the Meadows. When I say I felt the brakes applied it was the usual feeling that one feels on a car when there is a sudden slackening of the speed. The brakes were applied some distance back from the crossing. It was very shortly after the whistles were blown. They were applied very shortly after I heard the whistle."

#### Re-Direct Examination.

"After the accident I examined the forward end of the train to see what, if any, damage had been done to it. The party that I had been sitting with in the car and myself walked forward in the car after the accident, and we took particular note that the car was standing oposite the third telephone pole. We, also, noticed that the front end of the street car was not damaged at all. The fender was not even broken or seemed to be out of place in any way, shape or form, but that the front step on the right hand side of the car was jammed and wrenched out of place and jammed to pieces. It was the front step and was broken off from its hangings and torn to pieces. They could not repair it then. The train passed on without repairing it. It was just hanging. It was Mr. C. E. Hill with whom I was talking, the gentleman who just testified. It was the step that was broken off and hanging down. The sides of the step were of sheet iron with wooden

treads, and the step had been so wrenched that one side had been completely pulled loose from the car and was hanging down pretty near to the rail. It was the forward step on the right hand side that was struck. The pilot or cow-catcher was not touched or molested and the fender was not broken at all, just the corner of the pilot was jammed a little bit."

**PERRY SUMMERFIELD, WITNESS ON BEHALF OF DEFENDANTS, TESTIFIED:**

"I reside on and am the superintendent of the poor farm of Pierce County, and was a passenger on the Southbound train that collided with the automobile in question. I was seated in the rear seat on the right hand side; that is, I was lying down in the seat as much as I could; I was very sick at the time, and was in that part of the car known as the chair car division. I heard the road crossing signal just a minute or so before the accident happened, and then immediately prior to the accident. The first signal was 4 blasts. I would not want to state the exact distance North of the crossing I heard it. We were North of the Riverton Crossing when I heard it, a very short time, a minute or so before we reached Riverton. I could not state whether we had passed Allentown when this signal was given. As our train passed over the roadway, the electric bell at the crossing was ringing. I noticed that very distinctly. My estimate, which was made from looking back that distance, was that the train went

South of the crossing from 250 to 300 feet. I did not get off the train and go back, as I was very sick. The local train came down behind us a few minutes after the accident, which stopped a little ways back. It stopped before coming to the crossing; it did not cross over the roadway, but stopped back of the highway quite a distance back of that, 200, 300 or 400 feet. The electric bell was ringing while that train was standing back of the crossing. I could hear it very distinctly, and I was 200 or 300 feet away. The bell rang quite a while; I could not state how long, as that train stayed there quite a while, and it was ringing all the time. At the time the 4 blasts were blown the train was running along at its regular schedule rate. I did not notice any unusually high rate of speed."

#### Cross-examination.

"I was sick on this trip, lying back as much as I could in the chair. It was an upholstered chair in the parlor car division. There was nobody with me. There were people all around me, but I did not pay much attention to them. I was not engaged in any conversation. I could not state whether the window was open or not. I remember when the train crossed the Duwamish Bridge. I could not state whether it slowed down when it crossed this bridge or not. I noticed the whistle blowing the regular blast and then so quick afterwards came these 4 or 5 short blasts and I knew there must be something wrong, and that was what called my attention to the blasts. I heard the rapid whistle when the acci-

dent occurred, and before that I heard another alarm. I could not state whether this other alarm that I heard was before or after we crossed the bridge. It might have been just before we crossed it. I could not state positive whether there was any blasts after we crossed the bridge and before I heard the rapid whistle at the crossing. I heard the bell ringing at the crossing after the whistling, as we went by it. This was the first time I heard the gong." Q. You think the bell which you heard was the gong on this post or the gong on the car? A. Well, I thought it was the gong on the post. Q. But it might have been the gong on the car? A. It could have been. (Continuing.) "It could have been the gong on the car, perhaps, but I was very positive it was the gong on the post. I think so because I could hear it very plain as I went by, and after the car had stopped, then this bell had stopped. I feel positive that the gong that I heard ringing was not the gong on the car. I saw the automobile at a distance by looking back; I did not see it before it was hit. I think the train ran about 200 feet beyond the station before it stopped, but I would not be positive of this distance. There were windows open at that time on that side of the car, but I could not say how far they were from me,—just a few seats ahead some were open, and some were shut. I could not state how many windows there were in that compartment. I did not notice any difference in the speed of the car after it left the bridge and before it reached the crossing."

**B. F. ALDRICH, JR., WITNESS FOR DEFENDANTS, TESTIFIED AS FOLLOWS:**

"I am a photographer by profession and live in Tacoma; have been such photographer for 23 years; own my own studio, and make a specialty of photographic views and commercial work." (Defendants' exhibit "A" offered and admitted in evidence without objection. Witness shown photographs marked for identification Exhibits B, C, D, E, F, G and H.) (Continuing.) "I took these views myself on July 27, 1912, and they are correct representations of the scenes they purport to depict, and they were taken at the Town of Riverton, and they show the different views of the Riverton Crossing and the county road and the tracks of the Interurban." (All of the aforesaid exhibits were offered and received in evidence as Exhibits B, C, D, E, F, G and H without objection.) (Continuing.) "In taking Exhibit B, the camera was situated 367 feet West of the West rail of the Southbound track in the center of the county road, and it was 60 feet West of the sign reading, 'Caution, 300 feet to railroad crossing.' The sign is 304 feet West of the West rail of the Southbound track." (Witness writes the distance on the back of the picture between the camera and the track.) "When Exhibit C was taken, the camera was located 64 feet West of the West rail of the Southbound track exactly in the center of the county road." (Witness writes these distances on the back of the picture.) "This Exhibit C is looking North and shows a railroad

coach up the track, and the distance from the front end of that railroad coach was 1170 feet from the center of the crossing. I made the measurement myself. Exhibit D was taken in exactly the same location, and shows a railroad coach looking towards the North from the crossing. In this picture the train is 890 feet North of the point where the camera was or center of the crossing. In taking Exhibit E, the camera was exactly in the same location as in the previous two views and this shows an Interurban train which was 783 feet North of the crossing. In taking Exhibit F the camera was located in exactly the same place as the other pictures, 64 feet West of the West rail of the Southbound track, facing in a Northerly direction, and shows the train 360 feet North of the crossing in the most obscure point of the curve from that point of view. The coach was stationary while the pictures were being taken. When these pictures were taken a special car was sent out for that purpose and was moved from time to time for the purpose of determining the point where it would go most nearly out of view. Exhibit F shows the coach as it appears at the point where it would be more nearly obscured from view as it would come around the curve at a distance of 64 feet from the west rail. The coach is represented in this picture by the top of the coach and a little of the side and the end just to the left of the pole and between it and the bank. Exhibit G was taken exactly in the same location as the previous views. The train showing in it is 240 feet

North of the crossing. In Exhibit H, the camera was in the motorman's vestibule of the coach and taken at a distance of 550 feet from the crossing, which was the distance between the vestibule of the coach looking South toward the crossing. This picture also shows an automobile in the location of the camera when it took these previous views. I had the automobile stand in the same place for the purpose of this picture and am marking a small cross directly above the automobile."

#### Cross-examination.

"I operated the camera and arranged the distance shown in Exhibit C by pointing out the location and sending up a party with the train and having the train stop at just such a point, and afterwards measured the distance from the center of the crossing,—the car remaining at that point while we did the measuring, and I did the same thing with reference to the next view when the car was moved down nearer the crossing, and then I went back to the camera and took the picture and then measured the distance again, which was done with a steel tape, one of the parties helping. He is not here in the court room. We were a good share of the day taking these pictures, and other trains came along while we were there, which interrupted us at times, but we were able to secure the locations and got the views and measurements before we would allow the local to pass. Exhibit A is one looking South from the crossing; I manipulated the camera and that

took it. I stationed the automobile at that point before we went out, where it remained until we took the view. These were taken under the direction of the P. S. E. Ry."

Re-direct Examination.

"In taking the views where the camera was located in the roadway, the lens of the camera was just about 5 feet 4 inches above the level of the ground, and in taking the one view which looks South toward the crossing from the motorman's cab the elevation of the floor of the car was in addition to the 5 feet 4 inches from the track. I was then on the platform of the car and I got the elevation of the camera on the level with my own eyes."

J. O. ROSENBERG, WITNESS FOR DEFENDANTS, TESTIFIED AS FOLLOWS:

"I live at Riverton, and have been living there two years less one month; am a grocer, running a grocery store right there at the Riverton Crossing, and have been running it since March 1, 1912. I remember the occasion of the collision between the Southbound Interurban train and Dr. Rininger's automobile. Just prior to the time of the accident, I was standing below the macadam a little West of the platform that leads into the store talking to Mrs. Springer, who testified yesterday. I should judge I was 70 feet West of the track, probably a little less, and was facing North, partly Northwest, while talking to Mrs. Springer. She was facing Southeast. Her back would not be toward the crossing;

her left side would be towards it. I saw the Rininger automobile as it passed. I should judge the machine traveled between 15 and 20 miles an hour, and that was about 75 feet from the track. I watched the automobile continuously until the accident with the exception of just about the instant that the top of the automobile passed out of my view, and at that instant I intercepted a view of it from underneath the platform. It passed out of my view because my head was on a level with the grade and the automobile coming down the grade and my head being about level with the road was sufficient to obstruct a part of the view of the machine." (Witness' attention is called to Exhibit B.) (Continuing.) "It was taken West of the crossing. This is the platform leading from my store to the road. This is the bottom of the platform and the upper line is the railing on it. I was standing on the West side of it. The edge of the roadway slopes downward toward my store at an angle of about 45 degrees, and I was standing so that my head was about on a level with the roadway. The platform that leads into the store and also grade are what caused the automobile for a moment to pass out of my view. The automobile coming down the grade would probably be 2 or 3 feet lower than my head." (Witness shown Plaintiffs' exhibit 1.) Q. Now point out on that (exhibit 1) where you were standing when the automobile passed you. A. I was standing down here just about this point at the place marked "B," and it was this bridge or platform that

shut out my view as the automobile passed by. "I then stopped down and looked underneath the platform. There is an open space underneath the platform and I had a full view of the track from there. After the automobile passed and I had gotten down to where I could stoop down and look under I could not see the whole body of the auto, just the end part of the machine, that is I got a glimpse of it, and at that moment the collision had occurred, so that I just saw it swinging through the air." Q. Do you know whether or not the automobile kept up the same rate of speed or did it reduce its speed before the collision? A. Yes, as it partly passed out of my view it appeared to me as if it reduced its speed to some extent; that is, it had the appearance. Just at what distance it would be at that time I could not say. (Continuing.) The cause that induced me to stoop down and look underneath the platform when my view of the auto was obstructed was that I heard an approaching train, and heard the whistle and the rumble of the train. The last whistle that I heard was 4 blasts, the regular crossing whistles that railroads always give,—2 long, a short and a long one. I live at the store and had been living there for about 5 months before the accident, and was able to tell approximately from the sound of the whistle about how far the train was away, and I should judge the last whistle I heard was blown when the train was 200 or 250 feet away. This last whistle was the last one of the 4 blasts constituting the road crossing whistle. I did not hear any other whistle

after that. I think the train was North of Allentown, as she rounded the quarry curve when I first heard the rumbling. Allentown is approximately 600 or 700 yards, about 700 yards from the Riverton Crossing. Previous to hearing the rumbling of the train and the 4 whistles, and while I was conversing with Mrs. Springer, I was a few feet farther West than what is indicated by R on the picture there. When I first heard the rumbling of the train, I was about 6 or 8 feet West of the spot indicated on the picture and I heard the rumbling of the train continuously from the time that I first heard it North of Allentown until it reached the Riverton Crossing. From the length of time I have lived at Riverton I have noticed at what distance along the county road West of the track you can hear the rumble of an approaching train coming from the North. It depends on weather conditions. The specific distance that I am positive of noticing is at the intersection of a road about 600 to 800 feet West of the crossing up at what is called Thompson's store or Mr. Engle's residence; I have at several times heard the approach of the trains and the electric alarm bells ringing from that point. The distance at which you could hear the rumble of the train would depend upon atmospheric or weather conditions to some extent, and I know of no condition except a storm or a disturbance that I could not hear the approaching train at the point indicated. As the automobile was approaching the railroad track, the electric alarm bell was ringing." Q. How

far away from the railroad track was the automobile when you first noticed the electric alarm bell? A. I hardly know how to answer that, Mr. Tait, because I knew at the time of the train approaching that the bell was ringing and how far the automobile was from the track when I first noticed it; it is hard for me to indicate, but I heard the bell ringing while I was talking to Mrs. Springer." (Continuing.) "I heard the bell ringing before the auto passed. At the moment of the collision the automobile was headed Easterly. The tracks there do not run directly North and South, and the automobile was headed at right angles toward the train. When I first saw the train it was at the moment that it hit the automobile. I did not see it before, but saw it just at the moment that the two bodies met together. After the collision, the train came to a stop slightly ahead of the third pole South from the crossing. In counting the third pole I think I am safe in saying that I counted the pole standing in the North end of the freight platform near the side of the road, because the impression is fixed in my mind that it was the third pole and the front end of the car projected about 15 or 20 feet South of the third pole from the crossing. I have daily ridden over the Interurban line up to within 3 or 4 months of the time of the accident, and in making these daily rides I gained such experience as would enable me to estimate with a reasonable accuracy the rate of speed at which a train was running, and I should say that when I first saw the train at the time of the collision it was

running between 30 and 35 miles an hour. The surface of the county road on the West side of the tracks at the time of the accident was dry, newly sprinkled with screening. By this I mean that screening is a by-product from the rock crusher after the rocks are taken out, and contains the floury part of the rock, anything that passes through a half-inch to five-eighths mesh, and that is put on the surface of the road to absorb the liquid asphalt as the road is resurfaced. They had faced the road there almost daily until all the liquid oil was taken up by the crushed rock or the screening. They had men going over the road sometimes daily and sometimes every second or third day. The crew that repaired the road was working up above and sometimes they refaced that road every day, and other times four or five or six days apart, according to the need. On the afternoon of the day on which the accident occurred, the surface of the road was dry and dusty with a grey surface indicating that it was dry. I do not remember that there was any pitch or tar on the surface. I noticed after the accident marks on the road to show that the automobile had skidded. I saw the skid marks from the tires of the machine which had raked off the greyish surface on the road and had the appearance as if it burned the surface of the road by taking off the grey surface and leaving the brown skid marks on the road. It was asphalt under the brown skid marks, —asphalt and rock dust combined, which showed some tar and pitch to some extent, but not a liquid

pitch. This preparation of asphalt is the same kind of material that is used on the streets of the city, but is not as hard as the asphalt covering used in the city. It is a different process. I was requested to make a mark on the road and to drive a spike showing where the skidding began, and I took a line mark from the store window to a cross fence on the Interurban right of way, a fence that goes across the right of way from the South end of the platform to the extreme West boundary of the right of way, and I fixed my line of vision on that fence, and had a perpendicular line on the road about where the skid started, which I had obtained by sighting across the road from a point on the one side to a point on the other, which I have just described, and I have measured the distance from this line as fixed by me down to the tracks, which is  $39\frac{1}{2}$  feet.”

#### Cross-examination.

“At that time I was standing West of the platform and South of the roadway on the ground. I just stood there and had this conversation with Mrs. Springer. Before she came along I was going down below the platform for some purpose connected with the store; I don’t remember just what. I was not under the platform when talking to her, but just West of it about 20 feet, and 6 or 7 feet West of the grade, and Mrs. Springer was turned toward me, but standing North of me. We stood almost abreast of one another while we were conversing. It may have been a matter of a couple of

minutes that we talked, just an ordinary conversation in regard to her husband, as he was away at the time. I do not remember that there was anybody with Mrs. Springer. Trena Block was not with her that I remember. It was ~~af~~ter my conversation with Mrs. Springer that the automobile went by, perhaps a half minute or just a matter of a few seconds afterwards. As near as I could judge, the auto was in the middle of the road and I think it was going at a speed between 15 and 20 miles, nearer 20 miles. After it passed us it had the appearance of reducing its speed just as it passed out of my sight. The next time I saw it it was just at the moment of contact between the two. I could just see the end of the machine. I did not see it after it passed out of my view until the accident. I stated yesterday that I looked through and saw the top of it, but there is also an intervening space of time in changing the position from above the platform to underneath the plat-form, and in the intervening space of time I had lost sight of it. It was several seconds after it passed me before the accident occurred. I saw where the auto skidded. The roadway at the place where it skidded had recently been re-surfaced; by that I mean that each year, most of the time, what they call scarifying the road; they tear up the old surface and then they place a substance of asphalt and screening on the top to make a new binding—it is a sort of asphalt, so that there had been recently a new surface of asphaltum placed on this and that covered with rock screening.

This preparation of asphaltum that is used is similar to what we see on the streets in the city, but it is of a different density. It is softer. It is never as hard as the asphalt in the city, as I have not seen them use it with the same density. The warm sun had the effect out there where they were resurfacing of producing what the road men call sweating, due to the expansion of it forcing the asphalt at times up to the surface of the road, which softens it. This was a warm afternoon, but I don't think that the asphalt was softened at that time at that place. The sweating of the road through the sun raises the asphalt to the surface, and is done very frequently, and then from time to time as the sweating shows on the surface the workmen sprinkle more and more of the screening and rock dust on until such time as all the old oil that comes to the surface is absorbed in the rock, and that causes a hardening; consequently the younger the road is the more recently it has been screened, the softer it is the more rock dust is put on, and as more carbon is put on the harder it becomes. When I stated that I saw where the skidding of the wheel had burned the rock-bed, I meant by that it had burned through the more recent rock dust covering of the upper surface. The upper covering was rock dust screening,—a part loose and part hard. It did not scrape away the asphalt covering. It could not do that. I could not give the distance where the skidding began with reference to the platform, but it began to skid East of the platform; but I could not say how far East. I did

not drive a spike down where it began to skid, although I was asked to do so by one of the company's officials. I made one measurement of the skidding that afternoon and also the following day. The first measurement was made toward evening; I could not state exactly what time. I was able to make the recent measurement by the same mark that I used at that time. There had been nothing changed, either the buildings or any of the company's property. Consequently the same marks are there today. I fixed the line on the crossing fence on the company's right of way extending from the platform to the West end of what is supposed to be the right of way. That fence should run from the end of this platform up to the boundary of the company's right of way (showing on the photograph). The point on the fence from which I sighted was half the distance between the fence post and the corner post of the fence. I sighted from the East window East of the door of the store, which is about 30 inches wide, and a line from this window to the point on the fence would hit the rear end of the skid mark, which was 39 feet from the track measured about the middle of the highway to the west rail on the Southbound track. The auto was right at the track when it was struck near the middle of the traveled highway. I do not think it was any nearer the South cattle guard than the North cattle guard when it was struck, still there is a possibility. If it were nearer the South cattle guard that would make the distance from my line of measurement

longer, because the angle of vision from the store to the cross fence is on an angle with the road and the nearer and closer the store I would draw the line the longer would become the distance to the rail. I do not think that if the skidding were toward the cattle guard instead of toward the center of the street that it would be any shorter. It is possible, but I don't think so on account of the angle of the road. The Interurban road and the county road are not running at right angles by this map. Defendants' Exhibit A is a correct representation of the conditions there. The rail or track at the cattle guard is nearer to my platform than the middle of the road. I will fix the point on this fence shown on this plat from where I sighted. There is about a 5-foot space between the corner post and the other posts of the fence, and the point is half way between, or two feet and a half from the corner post. It is a board fence. The window from which I sighted is shown on this picture and I will put a cross at that point with lead pencil, and a line drawn from that point to this point on the fence passes the West end of the skidding. Defendants' Exhibit F shows the fence that I refer to, and I will put a mark on Exhibit F on the fence as indicating the point referred to. Defendants' Exhibit B shows my building. Plaintiffs' Exhibit 1 also shows correctly my building, and the window which I spoke of is the window in the front of this building, which has a square face. I could not state how long the automobile was, but the front wheels were almost on the rail

when it was struck. I could not see the distance from where I was, and the only way I ascertained that the wheels were near the track was by observation afterwards from the skidding of the wheels. I did not see whether or not the front wheels of the auto were on the track when it was struck, but my statement is based on subsequent observation. After the accident the machine was from 8 to 10 feet West of the rail and right angles from the county road facing North. The county road runs nearly East and West. I am positive that it was at right angles to the county road, and nearly parallel with the tracks. The rear end of it was just probably a matter of two or three feet from the freight station, but I am not positive of the distance. I stated Saturday that I heard the whistles of the train before the auto reached the crossing. I could not state how long before, probably a matter of 25 or 30 seconds. I was conscious of another whistle blowing before it reached Allentown. The first stopping place north of Allentown is Quarry, and it must be about 700 yards between the two stations, and the bridge across the river is North of that. It is pretty close to 900 or 1,000 yards between the bridge and the station called Quarry, and I heard the whistle before it reached Allentown and also after it passed Allentown. It was approximately half way between that station and Riverton. I did not see the train when the whistles blew, but I am led to believe that it was half way between Allentown and the crossing from the location through the sound waves. I don't

know the time between the whistle that blew at the other side of Allentown and the one midway between it and the crossing. It was approximately a minute or  $\frac{3}{4}$  of a minute, something like that. The second whistle was two long, a short and then a long one, the regular crossing whistle. I don't remember hearing any whistles after that—these being all that I remember. I could not give the time between the whistles and the time that the auto was struck, but it was a very short time. I heard the bell ringing when I was talking to Mrs. Springer during the latter part of our conversation. It was the ordinary ringing, and the first whistle that I heard was while I was talking to Mrs. Springer, and the second would be just about the time that we parted. On such a day as July 25, 1912, I could hear the alarm gong at the crossing I should judge North and South and probably East for 800 or 1,000 yards and probably more, that is 3,000 feet or over a half mile, and I could hear it on such a day that distance away. I have probably placed that distance a little too much for hearing the gong on such a day on account of the noise, but I feel positive I could hear it under those conditions fully from 1,200 to 1,500 feet, and if it rang while I was talking to Mrs. Springer she ought to have heard it, and if Trena Brock was then along with her she ought to have heard it. They both should have heard the whistles. You cannot hear the bell as far West of the cars as you can East on account of the bluff partly obstructing the sound, and the same condition exists with regard to the

alarm bell; that is you could not hear the alarm bell as far West as you could when you were going East because the bluff diverts the sound and the same bluff effects the Southbound train in the same proportion, so that you could not hear the Southbound trains as readily as you could if there were no bluff there. There are points on the highway West from my platform where you can see the tracks at Allentown, and yet not be able to see the tracks on the curve between my store and Allentown and at such a point you can see the tracks at Allentown and yet there might be a train or an electric car on the West track between Allentown and Riverton that you could not see on account of the curve. I should say that such a point was approximately 90 feet or more West of the track. While I think at a point 90 feet West of the track you can see the tracks at Allentown, I do not know whether you could see them or not at a point 100 feet West of the track. My attention was not definitely called to that while I was there on the ground. I think at a point 70 feet West of the track you can see a car all the way on the West track from Allentown but not the whole of the train all the way. You could just see the East side of the car part of the way for a short distance but not the entire car. Still I am not certain. I have looked to see and I am pretty positive that at a point 60 feet West of the track you could see the train the whole distance, that means measuring in the middle of the road to the Westbound rail. I should judge the train was running 30 to 35 miles an hour

when it struck the auto. It is possible it was nearer 35 than 30 miles. I did not see the train until it struck the auto, and the moment it struck it it passed behind the freight house and I could not see it after it passed the freight house. I only saw it for a part of a second of time and yet I think I am able to have some idea of the speed it was going at. When I was looking at the auto, I did not notice any other vehicles around there. I saw Mr. East on the witness stand, but I do not remember a delivery wagon crossing at the time of the accident nor did I notice any after the accident, but there might have been a hundred there and I would not have known it because I was too busy attending to those who were in need at that time. I was helping the two ladies who were thrown out of the car. I did not notice any automobile standing on the other side of the crossing. After the auto passed me, I watched its course toward the track. I did so because of being conscious of the approach of the train and seeing also the auto approach the rails. In the summertime the traffic on the road there is very heavy, and was heavy on that thoroughfare in 1912. At certain parts of the day vehicles are passing nearly all the time. The next day after the accident, the coroner of the county held an inquest and I was there and testified as a witness." Q. Did you testify to this effect: 'Q. (By Mr. Steele) Mr. Rosenberg, did you see this collision between Dr. Rininger's car and the railroad train? A. I partly seen it and partly not the platform in front of the store obscured part

of the accident. Q. Tell the jury what you saw of it as you saw it: A. I was standing below the macadam road probably about 6 or 7 feet below the level of the road when I heard the Interurban car blowing the whistle and the gong started a commotion, and was talking to a Mrs. Springer, and as Mrs. Springer started to go west on the road I observed an auto coming down the grade and to me it appeared as it didn't go an unsafe rate, I should say between 15 and 20 miles an hour. It appeared to me that the man was aware of the car coming and slowing down, so I paid no more attention to it, but as the car was approaching I reached up and looked over the platform to see if the car had come to a standstill, and not observing the car I glanced under the platform just as the collision occurred.' Did you testify to that? A. Yes sir. I testified to that in substance, only one or two words in there that might possibly be taken down wrong, or I may not have expressed it right on account of not speaking very plain at the time; that is the words 'as the car appeared' (Continuing) To me, as far as my memory goes and what I am trying to impress, the words should read 'the car not going at too safe a speed,'— the other part I remember distinctly. (Continuing) I glanced over a copy of my testimony taken at the coroner's in quest about two weeks ago. I read it over in Mr. Tait's office and asked him if he would give me permission to read it over." Q. Now did you testify to this: 'Q. How far was the auto from the crossing when you first saw it? A.

About 60 or 65 feet,' did you testify to that? A. I don't remember how I could come to give that statement. Q. You don't remember whether you testified to that or not? A. No. (Continuing) "If that statement appeared in the transcript of the testimony which I gave at the in quest, it is possible that the language is correct, though I cannot see how I could make it or use that language because I was standing further away from the crossing than that, and I observed the auto before it came abreast of me." Q. I want to find out whether or not this is a correct statement of what you said before the coroner's inquest? A. It must be that as far as I know. Q. And that was the next day after the accident? A. Yes sir. Q. Did you not also testify as follows: 'Q. You say it attempted to slow up. A. Apparently; the car was running smooth and noiseless except the engine was shut down,' did you testify to that? A. Yes sir. Q. And that was true, wasn't it? A. Yes sir. (Continuing) "I noticed that the red lights on top of the gong were burning at the time. I noticed this as I was standing beside the platform below the grade of the road and the platform was between me and the gong; I was below the platform." Q. Then you had to look under the platform, didn't you, to see the lights? A. Well, as a matter of fact, I can't say that I looked at the red lights at the time—I can't say that I did. (Continuing) "I only know that the gong can't ring without the lights burning. I do not now recall seeing the lights burning at the time. Q. Did you fur-

ther testify at the coroner's inquest as follows: Q. Approaching Seattle on the public highway in an automobile 60 feet East of that crossing, a man sitting in the seat, how far could he see the railway train going to Tacoma? A. I think there is one point in the 60 feet where he would be able to see the train at two points, would be able to see it about 200 yards away. Then there is an intervening space you could not see it at all at 60 feet from the crossing until the car probably comes within 100 feet of the crossing; did you testify to that? A. I testified to the approximate distance. Q. Well, you gave this testimony? A. Yes sir. Q. Was that correct? A. As far as the wording is concerned, though I said at the time 'approximately'; of course I had not taken any measurements. Q. There is nothing in this said about 'approximately,' is there? A. Not that I heard. Q. Then you did not use the word 'approximately' when you gave this testimony? A. Probably not just there. The approximate distance had been gone over at the coroner's inquest before, as I remember. Q. Did you testify as follows: 'Q. Did you see this automobile stop before the collision? A. No sir, the platform obscured my view. Q. How far was the automobile from the track when you last saw it before the collision? A. About 40 feet'; did you testify to that? A. I think I did. Q. And was that correct? A. No, the distance was not given quite correct there. (Continuing) "I do not remember hearing any bell on the car." Q. Did you testify to the following: 'Q. How far did this rail-

way train run after the collision beyond the crossing? A. In the neighborhood of 100 yards. Q. And then it stopped? A. Yes sir'; did you testify to that? A. I think I did, yes sir. Q. Is that correct? A. As far as the testimony there is correct. Q. It went about 100 yards before it stopped? A. I gave that testimony there. Q. Now was that the correct distance it ran before it stopped? A. I had no means of knowing that the distance is correct; that was just approximate—what I approximated it to be. (Continuing) "That would be about 300 feet. I testified at the inquest that I first saw the train just after it had struck the auto, and that is correct as near as I can judge, so that I did not see the train until after it struck the auto that I can remember. I might possibly have had a glimpse of it." Q. Did you testify at the same hearing as follows: 'Q. You heard it blow one whistle first; that was the first whistle which blew, one blast. A. That question I said I was not positive on. I had an impression I heard that. Q. You are not certain that you heard that one blast. A. I could not swear to that, but I had the impression— Q. Then you stated you heard four blasts of the whistle close together. A Yes sir'; did you testify to that? A. Yes sir. Q. Was that correct? A. As Near as my mind can grasp it. (Continuing) "So that I testified at the coroner's inquest that I could not say definitely that I heard the first blast, but that I had an impression that I heard it, so that the next day after the accident I could not remember distinctly whether I heard the

first whistle or not. I do not remember any more definitely now than I did then that I heard the whistle at Allentown. I have the same mental impression." Q. Did you also testify at the inquest as follows: (Speaking about the auto) 'Q. Now, on what were you basing that distance if you did not see the train. A. Just the sound only. Q. The sound only. A. Yes sir. Q. Were you paying any particular attention to it for any reason to be observing it to size up the distance before the collision? A. Yes sir, I have a reason in one respect. I see the autos and narrow escapes almost daily; I have almost a dread when I hear the ringing and I see a machine pass on the road, because I see daily close escapes of machines attempting to cross the track before trains'; did you testify to that? A. That is my testimony. Q. And that is true, is it? A. Yes sir. Q. Is that due, in your judgment, to the fact that the vision of the train from the highway is obstructed or because it is a dangerous crossing on account of the topography of the country? (Objected to as irrelevant, immaterial and incompetent. Objection sustained. Exception noted). Q. Did you further testify as follows at the inquest: 'Q. You simply gave your best judgment that the train was 450 feet away when it blew those four blasts of the whistle? A. Yes sir. Q. And gave no other signal from that time until the collision that you know of? A. Not to my knowledge.' You testified to that? A. I must have done that. Q. And that is correct, isn't it? A. As to the distance? Q. No, I mean your tes-

timony which you gave is correct. A. Yes. Q. Now, did you not also testify to this: 'Q. Is it not a fact that at a distance of about 50 feet an approaching train—an approaching train from Seattle towards Tacoma disappears at a distance of 150 or 200 feet from the crossing and emerges again at the telegraph pole, which is about 100 feet? A. Yes sir, I think that would be pretty near right, at 50 feet a person would probably not see the full distance down to Allentown'. Did you testify to that? A. To the language of it, I did, but as to the distance I did not know. Q. Was that statement then true? A. It was true. The distance had not been measured, but I was only asked to give a mental approximate distance which I did offhand. (Continuing) "It is not my testimony today. I have made measurements since that at my own request to satisfy my own mind. I was not requested to make such measurements by any one. I did not help the photographer make the measurements respecting the train disappearing. I am in the grocery business at Riverton and am in the employ of the defendant at the present time, and have been in its employ since after the accident, not all the time; I don't remember the intervening space of time since then, but have been in its employ over a year. My sons are not in the employ of the company. I have charge of the Riverton Crossing for the defendant, serving as a flagman or watchman. I also have charge of the keys to the freight house there. I am not the freight agent there because they have no freight

agent. The only connection I have with the freight is that I have charge of the keys to the freight house, and I receive a salary for watching and being in charge of the crossing, and I had charge of the door key to the freight house at the time of the accident and have had since I went into the store. My predecessor had the key and when I took charge of the store I also took charge of the key. I had been in charge for about 5 months and was receiving free transportation over the road for that service and this free transportation continues now. When I first saw the auto, I must have been approximately 80 feet from the crossing but I did not remain the same distance; I walked down toward the platform probably 10 feet so that I was approximately 70 feet West of the crossing at the time of the accident. I don't remember seeing any delivery wagon or vehicle around at all at the crossing after the accident."

#### Redirect Examination.

"When I testified before the coroner's inquest the day after the accident, I had not made any observation for the purpose of determining the various distances which you could see an approaching train at various points back from the track, and the distances that I gave at the inquest were approximately only. Just my general recollections of the surroundings. In the transcript of my testimony at the inquest to which my attention was called this morning where it is stated, "and as Mrs. Springer started to go West on the road I observed an auto

coming down the grade, and to me it appeared as it did not go an unsafe rate—I should judge between 15 and 20 miles an hour." I don't think that was the exact language that I used. I think what I said was "at not too safe a rate." I think that what I said was "to me it appeared that it did not go at too safe a rate." On the day of the accident, the weather was clear and the road was dry and dusty. I do not remember that there were any spots on the road within 100 feet of the track which showed this soft asphalt oozing through the surface. There was no surface indication of any oozing where the skidding took place, so far as I can remember. The repairs on this road, as I remember, began about 5 or 6 weeks prior to this time and the workmen finished each section as they went along. They probably took a section of 25 or 30 feet and sprinkled it and then they finished that section and would go ahead with another section—following it up from time to time as the necessity arises, and spread this rock dust on the surface of the road until all the asphaltum is taken up. They finished the section lying within 100 feet of the track 5 or 6 weeks before the accident. They kept a man on it afterwards and it was about a month, a little more or less, prior to the accident before it was entirely completed. The rock dust that is used is a by-product of bisaltic rock taken from the quarry in that neighborhood, and when the rock dust is spread over the soft asphaltum it would harden it. The rock dust contains none of the properties of cement,

but is an absorbant. It answers the purpose of taking up the oil that is in the asphaltum, leaving the base material hard. After the rock dust or screenings are spread over the soft asphaltum, it would be a solid mass. It would unite into one body and the degree of hardness depends upon the temperature. On a real warm day, the action of the sun beating on it for a very long time would make it so soft that perhaps you could make an impression with your heel, but on a cool cloudy day, especially in the winter time, it is sufficiently hard to become slippery, almost like brick. It would take 5 or 6 days for it to harden after the rock screening was applied."

#### Re-Cross Examination.

"On that particular section, the coating of asphaltum was thicker than any other section of the road on account of the increase of travel and congestion on that corner. Probably it would be two or three inches thick, and it would take 6, 7 or 8 days to harden after they applied the crushed rock or screening to it, and if it were very warm weather it would take longer, and after it remained a while and the weather got warm again the surface would again soften so that you could make dents in it with the heel of your shoe, and then they would apply another coating of screening in spots. In the weaker part of the road, the oil is forced up in spots where there is the least resistance, and then the screening is applied to those particular spots again. The usual time for resurfacing is in the spring and sum-

mer. I think they began resurfacing this road down at Allentown—the portion between Duwamish and Allentown Bridge—if I am not mistaken up around near the Duwamish curve, as I saw the workmen going and coming. I think it was earlier than the end of June when they began surfacing there. I have a faint recollection that they started to fix that road after I had been in the store six weeks or two months. I spoke to the road supervisor in regard to rut holes close to the track. I know that personally, because I asked him if he were not going to fix it and he said "We will be up there pretty soon," and this was a couple of months after we had been in the store. The surface of the road that afternoon had become softened to some extent as it did on all warm days, but I did not observe any spots where it had oozed out in nearly a liquid form. Whenever that sweating process takes place and the public travels over it, it has a tendency, in a sense, to drag the asphalt and the rock into the store—my store is located there—and that is the reason why I watched it very closely and whenever I saw the supervisor of the road—if some of his men didn't attend to it regularly—I spoke to him and I do not remember any such instance at that time. I would not do this, however, unless it had oozed up in sufficient quantities so that it would adhere to the pedestrians' shoes." (A picture was then shown to the witness.) "This picture correctly shows the auto as it appeared after the accident. It shows the machine as though it were a little farther South toward

the platform, and probably a foot or two farther West, but I am not positive of it. I think the auto should be two or three feet nearer the track as in the picture it appears as if it were over the West half of the freight platform. It is fixed in my mind that it should be nearer the track in the center of the freight platform. The picture referred to was taken within a couple of hours after the accident and before the machine was moved away." (The same was received in evidence and marked "Plaintiff's Exhibit 14") (Continuing) "I should say the auto was left 8 feet from the track, although in Exhibit 14 it would appear to be 11 feet or over from the track."

#### Re-Direct Examination.

"The road is more slippery in the colder weather, provided the road is clean and free from all grit on the surface—the rain washing it off makes the road more slippery in the winter time with the hard surface. There has been absolutely no change either in the location of the fence, of the roadbed, of the store, or any object that I know of showing the topography of the road, and the bluff is absolutely the same."

#### C. V. ALLEN, WITNESS FOR DEFENDANTS, TESTIFIED AS FOLLOWS:

"I live in Tacoma and am the land and tax agent of the P. S. E. Ry. Co. I am familiar with the rights of way owned by it, and also with the Riverton Crossing where the tracks of the company

cross the public highway. North and South of the Riverton Crossing, the company owns its right of way 100 feet wide which is 50 feet wide on either side of the center line of the double tracks, on both sides of the county road, excepting the land owned by the county. This runs from Duwamish River on the North and practically all the way South. The right of way North of the crossing is described by metes and bounds, and the county road is excepted from the 100 foot right of way, so that the right of way has varying widths North of the crossing, but it is about 50 feet wide on the West side from the center line of the double track, which I can show on the map better. This red line here represents the center line of our right of way, and we own 50 feet Westerly of that center line and the county road on this side (East side). The staked-off county road is a little different from the used county road. What is known as the located county road cuts diagonally across the right of way and runs practically parallel with the center line, but the used county road is different, and the county road as it is actually traveled is shown on this drawing marked Exhibit A."

#### Cross-Examination.

"Our company makes no claim to the county road between the two cattle guards nor to the macadamized portion of the road North of the crossing. We make no claim to the county road, and this fence on the West line North of the crossing is not on the boundary line. Our line is about 11½

feet farther west. I do not know who built the fence. I think it was built at the time our road was constructed. I have been in the company's employ three years. There is a foot path on a portion of our land on the West side of the track."

**CHARLES H. SHARP, WITNESS FOR DEFENDANTS, TESTIFIED AS FOLLOWS:**

"I live at Riverton; have lived there about four years; am working for the Seattle Star. Have never been in the employ of the P. S. E. Ry. Co. I was on the East side of the track at Riverton looking toward the North when Dr. Rininger lost his life. I will make a mark on Exhibit A showing the point where I was standing at the time of the accident. This point is lettered S, which was a little South of the center of the county road on the East side of the track. I saw the train from Seattle that collided with the auto. I had been standing there about a half minute. I happened to be there because I saw the car coming and I ran across and just then I saw the auto skidding and I was on the North side of the station and the car came right on the auto. I did not hear the train blow any whistles. I am kind of used to hearing it blow the whistles and did not notice it. I think the electric gong was ringing but I am not quite sure. I saw the automobile before it was struck. The rear wheels were locked and not turning. The auto was going at a good rate of speed. I would not call it slow. Am able to state at the rate of speed it was going. I think it

was going between 25 and 30 miles an hour when I saw it. It was about 30 feet from the track when I saw it and the wheels were then skidding. It was then that I saw it. They skidded about 40 feet until they came to a stop. When I saw the automobile the train was about 15 feet from the North side of the cattle guards on the North side of the track. When I first saw the automobile it was about 40 feet from the track. The train was right at the point marked letter C on Exhibit A."

#### Cross-Examination.

"At that time I was not working. I was down to the store that day to get some groceries. I had my bicycle down there. I was not on it. At that time I was 14 years of age. I am now 16 years. I came from Rosenberg's store. I rode from the store down across the crossing, and then I got off. I saw the automobile after I got off, and after I got across the crossing. When I first saw the automobile it was about 30 feet from the track and little West of Mr. Rosenberg's store about west of the platform, which goes into his store, and I saw the train at that moment. I noticed the bell ringing there. I think I saw the automobile first, and about two seconds afterwards I saw the train. It was then about ten feet on the North side of the passenger station, I mean by that the platform North of the crossing. There is no building there, just kind of a platform; and the train was about ten feet North of that platform, which is about 25 feet long, so that the train

was 30 or 35 feet North of the crossing, and I saw it about two seconds after I saw the auto. The auto was not coming directly toward it. It was coming kind of North of me, because the road didn't come right toward me. I will mark the point with the letter F on Exhibit A as the place where the auto was when I first saw it. This is East of Mr. Rosenberg's store. I said a moment ago that it was West of it. I think now that it was East of it, that is I think now it was East of Rosenberg's store, but West of the freight depot. I was mistaken then when I said it was west of Rosenberg's store. It came along in the middle of the road. When it stopped the front wheel was in the center of the gravel road. I don't think it was over on the South side of the macadam when it stopped. I am not positive but I don't think so. It had stopped before the train struck it, but did not squarely face the track. It was not approaching me quite directly. I do not think with the automobile approaching me in that way that I could very well tell its rate of speed. I have not been accustomed to driving automobiles. We have none in our family, and I have never driven one. I have only ridden in one once or twice. Never rode in one as large as this. I am led to think it was going 25 or 30 miles from the way it skidded and the speed it was going when it hit the track. When I saw it, it was about 30 feet from the track, and it had stopped just as the front wheels got to the track. I said it skidded 40 feet. When I saw it it had already started to skid. It was skidding

when I saw it. I did not notice any whistles from the car. I am so used to them I didn't notice it. I stayed there about 25 minutes after the accident. I didn't notice any other trains coming in at all. The local did not come in from the North within a few minutes after the accident, and I did not notice the limited coming from Tacoma on the South track after the accident, although I was there 25 minutes after the accident. I didn't notice any other trains coming in at all. The local did not come in from the North within a few minutes after the accident, and I did not notice the limited coming from Tacoma on the South track after the accident, although I was there 25 minutes. I did not hear the bell ring after the accident. I went into the store about 15 minutes after the accident. I am quite sure that I heard the bell ringing before the accident, but cannot say for sure. I have talked with my mother about the accident, but with hardly any other people. I went to Mr. Rosenberg's store. I did not hear any discussion in the store about the bell ringing. I did not see the delivery wagon coming up toward the crossing. I saw no delivery wagon there after the accident nor an elderly man drive up right behind the auto just a moment after the accident. I think there were two ladies in the automobile that were thrown out, and I saw two men pick a woman off the track. I did not see any one help the other woman. I did not see a delivery wagon halted for 15 or 20 minutes near the crossing nor an automobile approaching from the North. I

went over on the West side of the track after the accident. I did not see any automobile coming from town. Before the accident I came right from the store on by bicycle and got off and saw the auto coming on the track and the car coming, and that's all I saw. I stood there a half a minute before the accident and heard the car down at Allentown. I am a friend of Mr. Rosenberg's boys, quite intimate with them. The ages of his boys are nearly mine, and I am quite friendly with one of them. I have not talked this matter over very much with them. After I crossed the track and before I stopped and looked back I did not see the automobile. I heard the car down at Allentown 3 or 4 seconds before I got off the bicycle, just heard it when I ran over the crossing. There is a good deal of traffic on the crossing."

#### Re-Direct Examination.

"When I saw the auto it was quite a bit nearer to me than Mr. Rosenberg's store, about 10 feet nearer."

MRS. CLARA ROSENBERG, WITNESS FOR DEFENDANTS, TESTIFIED AS FOLLOWS:

"I am the wife of Mr. Rosenberg who has just testified, and have lived at Riverton about two years; was living there at the time of the accident, and was in the store before the collision. I saw the automobile as it passed in front of the store. I am not able to estimate the rate of speed at which automobiles move, but as it passed the store, it seemed

to me it was going fast. I could not estimate the number of miles, as I am not familiar with them. When I observed it, it was about 97 or 98 feet from the track. I am able to state this distance because some parties there measured it one day with a tape line, and they asked me to see if it was correct. I pointed out where the automobile was when I saw it, and the measurement was from that point to the track, and it was about 97 or 98 feet. I was in the store back of the counter right by the window and saw through the glass window on the door. There is a window in the door, and one on the side, and I was standing sidewise and glanced out of the window of the door. As the automobile passed my range of vision through the door it did not seem to slackened speed any. I just saw it for an instant, and it then passed out of my sight."

#### Cross-Examination.

"The measurement referred to by me was made about two weeks ago, almost two years after the accident. I had seen no measurements made before this time. When the auto passed, I just glanced at it—just looked out and back again. I was not waiting on a customer at the time. I think I was not doing anything but talking with some one. I was more interested in my conversation than in the automobile. Subsequent events have impressed the automobile more on my mind than it did at that instant. Mr. Rosenberg was below the platform some place; I don't know exactly. I did not see him

until afterwards. I did not see Mrs. Springer that afternoon. The measurement of 98 feet was made to the center of the crossing. I was with the men at the North end when they measured it, and at the track also, and it was in the center of the road that they measured it. I could not tell whether the auto was in the middle of the road when it passed or not, as I did not notice that. The glass in our door is just an ordinary one. The door itself is probably  $2\frac{1}{2}$  feet wide and the glass is inside of that, and I saw through this glass. I did not go to to the door and look out."

MARTIN BAKER, WITNESS FOR DEFENDANTS, TESTIFIED AS FOLLOWS:

"I live in Seattle; am a photographer; make a specialty of commercial work. (Photographs marked for identification Defendants' Exhibits I, J, K, L, M and N were shown to witness who examined them) I made the negatives from which these prints were made, and took them on February 7, 1914. They are correct pictures and representations of the objects and scenes which they purport to depict. (Said exhibits received in evidence without objection.) When exhibit J was taken, the camera was 54 feet on the East side of the track which would be the North side looking down the road in a Westerly direction. The camera was on the right hand side of the tracks looking towards Seattle, in a Westerly direction. In exhibit N the camera was pointed South on the track 133 feet

North of the center of the county road. In this instance the camera was located on the front end of a car where the motorman is, taken right through the glass window at a point where the motorman would stand in running a car. In exhibit I, the camera was located on the top of the platform on the right hand side of the track looking toward Seattle on the East side. It was 59 feet from the center of the road on the crossing. The camera was pointed Northwest. In exhibit M, the camera was standing 28 feet from the center of the road North of the road looking South. In exhibit L, the camera was standing on the car in the same position as the other one I testified about looking through the window, and is taken from the middle of the bridge 1016 feet North of the center of the road looking South. This was taken opposite the Westerly end of the middle of the bridge that crosses the river. When these photographs were taken from the front end of the car, the car was on the West track. In exhibit K, the camera was located on the car in the same position as the one previous to this looking South, and it was 797 feet to the road, and was taken on the car standing on the Southbound track. All these pictures about which I have testified are views of the Riverton Crossing, but not directed at any fixed point. All these measurements given by me relate to a point on the West rail of the West track in the center of the county road at the Riverton Crossing."

## Cross-Examination.

"In Exhibit N, there is a man standing with his hat in his hand. He was 90 feet from the track in the middle of the road. In exhibit M, there is a man standing in the foreground. I do not know how far he was from the track."

## Re-Direct Examination.

"The man with his hat in his hand shown in exhibit N is the figure appearing on the right of the photograph 90 feet from the center of the South-bound West track in the center of the county road. I did not make the measurements. I saw the tape that was used in measuring it."

**WILFRED DE JARLIUS, WITNESS FOR DEFENDANTS, TESTIFIED AS FOLLOWS:**

"I live at the Barker Hotel in Seattle, and am in the automobile business; have been in that business now two years. I am not a salesman or a demonstrator, but I own the cars. I have three rented cars, and understand the practical operations of automobiles. I drive them myself and am familiar with the point where the county road crosses the tracks of the P. S. E. Ry. at Riverton. I have crossed it every summer during the summer months on an average of once a week. I was familiar with this crossing in the latter part of July, 1912. At that time the roads were in fairly good condition, with the exception of bumps, rough in some places due to the road being worn. That road is slippery

when it is raining; that is the only time that I found it slippery, which is true of all asphalt roads." Q. Suppose that a Sterns automobile weighing 4500 pounds, a four passenger car, should be approaching the Riverton Crossing from the West coming towards Seattle and should skid from a point 39 feet West of the West rail of the nearest track, coming to a stop with the front wheels practically at the rail but not quite over it, on a bright, dry day with a dusty road, what rate of speed would you say that automobile was running at when it first began to skid? A. Did the car have plain treads or did it have steel studded treads? Q. I don't know—that does not appear in the testimony. A. Well, a car with steel studded treads is liable to skid more than a car with plain rubber treads. Q. By 'treads' you mean the rubber tires. A. I mean just natural rubber treads. There are some tires that have steel studded treads that look like a rivet that will skid on a dry pavement, but if it was a plain rubber tread on the car, a car that has skidded 39 feet was not going at less than 30 or 35 miles an hour at my driving. Q. On that particular road at the time I have mentioned, assuming it to be dry and dusty, within what distance would such an automobile as I have described, or within what distance should an automobile as I have described be stopped, if running at the rate of 12 miles an hour? A. About 12 feet.

Cross-Examination.

"A heavy automobile is not necessarily more

liable to skid than a light one, as a heavy machine will hold the ground. If the machine itself weighed 4500 or 5000 pounds and had four passengers in it, it would probably make three miles an hour difference. I mean by that a car with a heavy load in, you probably could not stop it less than three miles an hour shorter. It makes a little difference, not much. If a machine skidded 21 feet on a road that had been recently sprinkled with crushed rock or rock dust, more or less loose, and the machine weighed 4500 or 5000 pounds, with 4 grown people aboard, coasting on a four per cent. grade, it must have been going at least 25 miles an hour. A machine on a descending 4 per cent grade, weighing between 4500 and 5000 pounds, with four passengers in it, and the wheels suddenly locked, could not skid unless it was going over 20 miles an hour on that grade up there. I am now operating two Pierce Arrow 6-cylinder cars and a Packard; have operated a Sterns car about 6 years ago in the City of Goldfield, Nevada. It had 50 horse power. If it rained the day before, and there was sunshine the next day, it would not effect the road."

#### Re-Direct Examination.

"I know of my own knowledge the sort of a machine that Dr. Rininger was running, which was involved in this accident, and if that machine at that time and place skidded 25 feet up to the track before it came to a stop, I would judge that its speed must have been from 25 to 28 miles an hour."

## ROBERT S. TAYLOR, WITNESS FOR DEFENDANTS, TESTIFIED:

"I now live, and have lived in Seattle since 1906, and am an automobile engineer, and understand the practical operation of automobiles, and am familiar with that type known as a 4-seated Sterns. Assuming that it was a 60 horse power machine, I should judge that its weight would not exceed 4500 pounds. I am familiar with the Riverton Crossing on the line of the P. S. E. Ry. South of the City, and have occasionally gone across it—probably 4 or 5 times a year. If a 60 horse power automobile weighing 4500 pounds, with 4 passengers, including the chauffeur, should approach the Riverton Crosisng from the West driving toward Seattle on a bright, warm afternoon the latter part of July, and the brake was applied with such force as to lock the two rear wheels, so that the machine skidded after the wheels were locked a distance of 39 feet, and then came to a stop with the front wheels almost but not quite upon the West rail of the West track, I should judge that it was traveling not less than 30 miles an hour; and if, under the same conditions, it skidded 25 feet, then I should judge its rate of speed was a little better than 20 miles an hour; and if such a machine above described approached the Riverton Crossing from the West coming toward Seattle on a dry afternoon with a dusty road and was traveling at the rate of 12 miles an hour, and that when the machine came to

a stop the front wheels were almost but not quite upon the first rail of the West track, it could be stopped within 12 feet."

### Cross-Examination.

"I mean by an automobile engineer, a man who has charge of the designing and construction of automobiles. I am at present engaged in operating an automobile repair shop. I have personally owned a car for the last 4 years. I was superintendent of the Winton Motor Carriage Company for 4 years during which time I had entire control of all the cars both in the building and outside, which necessitated a great deal of driving and the operation of heavy automobiles. Previous to that time I was a tester for the Olds Motor Works and also tester for the Ford company. I am now driving a Cadillac, which weighs from 3200 to 3300 pounds. 4500 pounds would be the approximate shipping weight of a 60 horse power Sterns. It might come to a little less, but its weight is within 150 pounds of that amount. We usually allowed about 150 pounds for gasoline, water and all of the accessories on a car, which would include the extra tires. These weigh 30 or 40 pounds. Such machines carry 25 gallons of gasoline, which weighs 8 pounds to the gallon. This would make the gasoline weigh about 160 to 170 pounds. I was calculating on 22 gallons being in the tank. The water in the radiator weighs 40 to 50 pounds. The gas and water alone would weigh nearly 200 pounds if it was just filled up,

and with an extra tire it would be 30 or 35 pounds more. The tools and appliances are included in the shipping weight. While frequently an extra tire is included in the shipping weight, I do not know whether it is in a Sterns. Having four grown people in the car, who would average 160 pounds apiece more, I should judge it would weigh over 5500 pounds. If the tanks and radiator of this car were full and there were 4 grown people in it, and it was going down on a descending grade of 4 per cent. on a macadamized road and the wheels were locked suddenly and it should skid 21 feet, I should say the car was going approximately 20 miles an hour. If the same car, under similar circumstances, going down this descending grade at Riverton, on a warm afternoon, and the brakes were suddenly locked, and it was going at the rate of 15 miles an hour, it would skid. You can always make a car skid if you are going anything over 10 miles an hour, and you can make it skid at less than that if you have a powerful enough brake, as the quick application of the brake has something to do with the skidding, so that if they were applied gradually and slowly, the car would not skid, but if the brakes are applied suddenly and the wheels are locked, the car is apt to skid, and if a car were running 12 miles an hour, with its load weighing 5500 pounds, running on a descending grade similar to the crossing at Riverton and the wheels should be suddenly locked, I would estimate that it would probably skid 12 feet, and if it were running 15 miles an hour

under similar circumstances and the wheels were suddenly locked it would probably skid 16 feet. I have tested the matter out several times, and know I could stop a loaded car running at 12 miles an hour in 12 feet on a down grade up to 5 or 6 per cent."

#### Re-Direct Examination.

"The better way to stop an automobile is to apply the brakes so as to give the greatest friction possible without locking the wheels, and if you apply the brakes so that the wheels will just not skid, that is the greatest power you could give it in the way of stopping, so that they just will not skid, and this will stop the machine quicker than if you apply the brakes so strong as to cause the wheels to skid. When I say that you could stop a car running at 12 miles an hour within 12 feet, I mean if you apply the brakes so as to lock the wheels you could stop it within a shorter space than if you do not lock the wheels."

#### D. M. DINGWALL, WITNESS FOR DEFENDANTS, TESTIFIED AS FOLLOWS:

"I am a motorman on the P. S. E. Railway, having been such for a little over 11 years, and have been running between here and Tacoma all the time, operating passenger coaches, and from my experience, as a motorman on this line, operating an electric train and cars, taking a single coach chair car type, running at 35 miles an hour, approaching the Riverton Crossing, in my estimation the least dis-

tance within which the car could be stopped making an emergency application of the brakes, assuming that the rail and all other conditions were most favorable, would be between 350 and 400 feet, and if such a car were running between 30 and 35 miles an hour, it would not be possible to stop it within from 80 to 100 feet."

#### Cross-Examination.

"This distance of 350 or 400 feet would be from the time the brakes were applied, and would give different results in the way of stopping the train by applying the brakes differently, and in order to get the best results for stopping we apply the emergency brakes; that is by putting the brake down in the emergency position, and we then get 15 per cent more braking power than by stopping it by the service application. If the car were running at 30 miles an hour, it could be brought to a halt within 300 and 350 feet, and if a motorman were approaching a place similar to the Riverton Crossing and when within 133 feet of the crossing he observed an automobile approaching the track and he was running at 30 miles an hour, he could reduce his speed about 20 miles an hour. If he were running 35 miles an hour and saw the auto 133 feet away and immediately applied his brakes, he would likely be running at about 25 miles an hour when he reached the auto. If a man saw an object 100 feet away and applied his brakes so that when he reached the object the car was running at 30 miles

an hour, it must have been running about 35 miles an hour when he applied his brakes."

EUGENE C. SANFORD, WITNESS FOR DEFENDANTS, TESTIFIED AS FOLLOWS:

"I live in Seattle; am a motorman for the P. S. E. Ry., and have been such for 8 years, operating both freight and passenger trains, and am familiar with the tracks of the company North of the River-ton Crossing. If a Southbound train were approaching that crossing at the rate of 35 miles an hour and the brakes were working properly, and all conditions for making a quick stop were the best, the car could be stopped by an emergency application within 350 to 400 feet; and, if, under such conditions, the car were running 30 miles an hour, it could be stopped within 300 to 350 feet; and if the car were running 30 miles an hour, it would not be possible to bring it to a stop before reaching the crossing when the brakes were applied at a point 130 or 135 feet North of the crossing."

#### Cross-Examination.

"I have been in the employ of the company for 8 years. I have had occasion to apply the emergency brake several times. If a motorman had applied his emergency brakes at 133 feet from the crossing, and the car was running at the time at the rate of 35 miles an hour, the rate of speed of the car would be reduced about 10 miles an hour, and if he were running at the rate of 30 miles an hour and had so

applied his brakes, he would have reached a speed about the same."

Re-Direct Examination.

"I have passed over this crossing on an average of twice a day, sometimes four times, for eight years. I am at present a freight motorman, which I have followed now for six years. I have not been running passenger coaches during that time as much as freight, but probably have done so a third of the time. I never applied the emergency brake at this crossing. The application of the brake to a car while it is rounding a curve does not make any difference in the speed."

F. J. DUNN, WITNESS FOR DEFENDANTS,  
TESTIFIED AS FOLLOWS:

"I live at Tacoma; am a motorman for the P. S. E. Ry., and have been for 11 years, running passenger trains. I am familiar with the Riverton Crossing passing over it in the last year twice a day. Before that, for 6 years, it was six times a day. If a single coach chair car type of train should approach the Riverton Crossing going South, and when nearing the crossing was running at the rate of 35 miles an hour, and all conditions were most advantageous for making a good stop, it could be brought to a standstill within between 350 to 400 feet, and if it were running at 30 miles an hour, it could be brought to a stop in about 300 feet. It would not be possible for a motorman to bring his train to a

stop if he were 133 feet North of the crossing before he reached the crossing. I was motorman on the local that left Seattle at 4:05 following behind the train that collided with the automobile, reaching Riverton 12 or 15 minutes afterwards. When we got to Riverton, the limited was about 200 feet the other side of the crossing. We stopped our train before we got to the crossing, just far enough up to let the passengers get off on the platform on the North side of the road. The electric gong was ringing when we got in there, and rang until the limited train went North which picked up the injured. We stayed at Riverton until the Northbound limited passed. The bell was not ringing when we left. The limited had cut it out just North of the crossing on the Northbound track. The limited stopped there until they took on the injured which was on the North side of the road. The passenger platform for the Northbound train is on the South side. The Northbound train stopped on the North side of the road because it was the handiest place for them to load on the injured."

#### Cross-Examination.

"When I say 'the injured,' I mean the people injured in the automobile accident. There was only one that I saw that they carried on the car. The limited did not stay there very long. I think we reached Riverton on our trip in about 12 minutes after the limited reached it. When we reached Riverton, the bell was ringing, and was cut out by

the other car. We had been there about a half hour before the Northbound train came along. When I was there, the limited stood 200 feet from the crossing, I mean from the South side of the road, but I made no measurements. I walked up to it with the wrench to assist the motorman to remove his fender. The brace to it, which was attached on the right side, was injured; that is, we had to remove the fender in order for him to take his pilot off. The brace which held the pilot had to be taken off before the train could proceed. I did not count the line poles. I estimated the distance at the time. I did this because it was in my line of business to notice in what distance the car was stopped. A car would not be going very fast if you could stop it within 133 feet after applying the brakes, probably 12 or 15 miles an hour. I would not think a car running 12 miles an hour could be brought to a standstill within 50 feet by the emergency brake. These cars are heavier than street cars. They weigh about 35 tons. I have never had occasion to apply the emergency brake at Riverton. Different conditions effect the space in which you can bring a car to a standstill that is running 35 miles an hour, and a curved track at that particular point would not have anything to do with the stopping of the car. I do not think that a car could be stopped any more quickly on that curve than on a straight track because it is not binding enough to make a great deal of difference. If a car were running 30 miles

an hour coasting, it could not be stopped in any shorter distance."

J. R. MORRISON, WITNESS FOR DEFENDANTS, TESTIFIED:

"I live in Seattle; am a civil engineer, and have been such for 30 years. During the year 1912 I was county engineer of King County, holding that position for four years from January, 1909, to January, 1913. I am familiar with the construction of the county road at the point where it crosses the tracks of the Tacoma Interurban at Riverton, especially the road West of the tracks, as that was originally built as a water-bound macadam road; that is, in the construction of a water-bound macadam road, the ground or base is prepared by rolling and then a layer of rock or crushed stone of practically 1½ to 3 inches in dimensions and to a depth of about 4 or 5 inches in thickness is laid, and then rolled with a steam roller and then another course of finer stone, running from about 1½ inch to ¾ inch is applied, and that rolled in to fill the holes or voids between the larger rock; that is followed by another layer of finer rock, called screenings, running from ¾ of an inch down to dust; that is spread over an inch and a half stone and water is freely sprinkled on that and the roller passed backwards and forwards; by the rolling and the use of the water flushing the fine material down until the voids or holes in the larger rock are all filled and the top sealed over with what is practically a rough cement. When

first applied that leaves a smooth, hard finish. During the Spring and Summer of 1912, the surface of that road was thoroughly swept of all dust, clean; a few places where there had been wear and there were little ruts appeared, they were loosened up and new rock placed in those ruts. Then the whole was given a coat of tarvia—that is a tar preparation which is used for a dust layer or binder. That was applied hot at the rate of about 4-10 of a gallon to the square yard of surface. That was covered with a layer of screenings and opened immediately to travel. Tarvia is a liquid. As we receive it it is about the consistency of a very heavy molasses, and we heat it in order to apply it to the road. After it has been applied and surface screening put over it, we open the road to travel. For the first few days, especially in warm weather, it needs pretty careful attention to see that there is enough screenings on in order to take up any excess of the tar. After the first week an occasional dusting, according to conditions, is necessary. Usually during the whole season there was a man detailed once a day, or whenever necessary, to pass over that road and cover such places as showed signs of breathing. A few hours after the tarvia is applied, it stiffens, hardens and produces with the screenings a layer which you might compare to the sole of your shoe, right on top of the former road. The total thickness would be from three-eighths to a half inch, average thickness. The tarvia, where the road is properly prepared, makes a perfect bond with the original sur-

face of the road. The screenings are thoroughly held and embedded in the tarvia, and wherever that is the case those are firmly held, there is always an excess of screenings applied which is swept off by the action of the winds or the automobiles. When this is done, the wheels take hold of the surface very well. This surface is a little rougher than the sheet asphaltum pavement which you find throughout the city here. Tarvia is an adhesive and not an oily substance. There are some light oils but most of those are evaporated by the heat. Such a road as I described offers good friction. The road for 100 feet West of the tracks at Riverton was treated in this way in May, 1912. I do not remember when the work was completed; I know at the time it was started. They would get through with that work at the rate of anywhere from two to four hundred lineal feet a day, according to the conditions of the weather. From the place they started it would have taken a week at the outside to get over the piece from the bridge to 100 feet west of the track. This work was done under my direct supervision."

#### Cross-Examination.

"They commenced surfacing that Spring at the Riverton bridge, with the exception of a little patch at Riverton just around a curve. It was commenced at the South end of the Riverton bridge and carried through to Orilla. Then the crew came back touching up the work back to the starting point; then across the bridge and put in the work from the

North end of the bridge, or the East end of the bridge up to Duwamish station, being stopped by the bad weather and cold weather in the Fall and not quite finished to the Duwamish station. They could not do very much when it was raining, and could not work rainy days in May and June. I have examined my record recently and know that they began work in May. They would cover from 200 to 400 feet of surface a day; and this preparation of tarvia softens by the action of the sun and it is inclined to do that more for the first few weeks after it is laid than later. That is because it has not absorbed all that it can absorb of the rock dust. The rains effect it in this way. A very light rain, during the first few minutes of the rain, it does effect it to a considerable extent. A very heavy rain, or a continued rain does not effect the slipperiness of it to any great extent. A very heavy rain leaves it in very good condition. The man detailed to look after the work goes over it from time to time, and if he finds that it softens so that it is oozing out, then he applies more rock dust or screenings, and this is done during the entire season, and occasionally the second year. I gave particular instructions to see that the work within 300 feet of the Riverton Crossing was very carefully looked after as there were a great many foot passengers, and when the tar is oozing to the surface, it makes it disagreeable for travelers, getting on their shoes so that I insisted that it be looked after. The macadam there is 16 feet wide and the ordinary graded roadway is 24 feet wide.

There had been a coating of tarvia on the road in this locality in 1911 so that the coating in 1912 was a second surface of tarvia, and would be thicker because of that fact. I do not think it would be any softer and would not be more likely to ooze as that is controlled mainly by the condition of the road when the tarvia goes on it, as a little depression in the original surface, or a little more open and porous will retain more of the tarvia below in a sort of storage, you might say small wells, and the heat may bring that through to the surface. This coat of tarvia in 1912 was 4-10 of a gallon to the square yard, which was just as thin as it would go on without standing in pools or without running. In fact sometimes it was swept with brush brooms to leave just what the broom would leave."

ARCHIE APT, WITNESS FOR DEFENDANTS,  
TESTIFIED AS FOLLOWS:

"I live at Kirkland; have lived there for four years; am dairying. I was riding on the train that collided with the auto at Riverton in July, 1912. I boarded this train at Seattle, and was seated in the second seat from the front, at the right hand side next to the window, which was open. As we approached Riverton, there were two long and two short blasts blown about where the county bridge crosses the river at Riverton. I should judge this bridge as 300 yards North of the crossing. As this train was passing over the crossing at Riverton, the electric danger bell was ringing. When we were

within 150 or 200 feet of the crossing, I was looking out of the window and saw the automobile which was struck. When I first saw the automobile the train was about 50 feet from the crossing. The automobile was about 50 feet from the crossing when I first saw it. It was moving toward the crossing. The train and the automobile were just about the same distance from the crossing when I saw it, as I had been looking down toward the crossing some time before I saw it, and there was nothing that obstructed my view of it until I came right around the bluff, and I saw the left rear wheel skidding, as that was the side toward me, so that it was skidding when it was 50 feet from the track. I have not had any experience in judging the different rates at which automobiles run. I have ridden about 8 times before on the electric train between Seattle and Tacoma and from this and riding on other trains I am able to have a reasonably correct estimate of the rate of speed at which the train was moving when I saw the automobile, and I should think it was moving from 30 to 35 miles per hour. The speed of the automobile when I first saw it seemed to be just about the same as the speed of the train. I saw Dr. Rininger standing up in his machine, as the top of it was down, and I should say the auto was within 20 or 25 feet of the track when the doctor rose to his feet. After I saw the auto, I do not think the wheels revolved at all.

"I do not know what happened when the train collided with the auto, as I pulled my head in so I

did not actually see the collision. I think the train ran about 250 feet farther after striking the auto. Afterwards I got off the train and went back to the crossing. When I got there, the electric bell was not ringing, and I stayed there about 15 minutes until the local came down from behind us, and when it came in the bell began to ring and continued ringing until the limited came from Tacoma, and then it stopped after the train passed over the crossing. When I got back to the crossing, I saw fresh marks on the roadway which showed that the wheels had skidded, and I estimated that the length of the skid marks on the ground was about 40 feet. These skid marks stopped about 13 feet before they got to the rail. I was going that day to Kent to work for Mr. Price. I have never been in the employ of the P. S. E. Ry. I never talked with any one about this accident until Mr. Jackson came over to see me a short time ago. I did not know at the time that he was connected with the company and no one connected with the company had ever talked with me about the accident before Mr. Jackson did, and he saw me two weeks ago Saturday. At the time of the accident, the conductor took my name and address."

#### Cross-Examination.

"I should judge that the end of the skid marks was about 13 feet from the crossing. I did not make any measurement of the skid marks. I went back as soon as the train stopped and I saw the auto. It was pulled back to the side about 15 or 20 feet from

the track. I did not pay any attention as to what direction it was pointed in. It was not in the same direction as the road, and about 20 feet from the track. I could not say how far from the freight shed, as I just glanced at it. I was there 15 minutes and until the local went South. The limited from Tacoma came in before it went South and I stayed there until after the limited came in. I could not say whether it was a half hour after the accident before the limited came in or not, although I should judge I was there about 15 minutes, staying there until the limited from Tacoma passed by. I did not see them assist any of the injured aboard the limited nor did I notice the front of the automobile as I did not look at it. During the 15 minutes that I was there I was standing around at the crossing under the bell, and while I was there I did not notice a delivery wagon there. I saw two or three helping those who were injured in the automobile, but I did not see any man doing it who had a delivery wagon there. I noticed one automobile on the East side of the track, which I think was a two-passenger runabout. I could not say who was in it. I don't think there were any other automobiles at the scene while I was there. While on the train I was seated in the second seat from the front on the right-hand side as you go South, with the window open, and I remember when the car passed along this bridge. It slowed down, not much, and I remember when it passed the station called Quarry after we passed the bridge. I heard a whistle at

Quarry, two long and two short blasts. I do not have in mind now the time when the car passed the Quarry Station nor when it passed Allentown, and I did not notice anything about Allentown when we passed it. I heard four whistles, two long and two short blasts. When I heard it, the car was about where the county bridge crosses the river. I know that because I happened to glance over that way when the whistle blew. I did so because I took a bunch of cows up there once, and I know we had a lot of trouble on the bridge with them. The bridge is over on the left-hand side of the car, and there is a high board fence there, and I could see over the top of the fence; that is, I could see the top of the bridge, and I happened to glance over there and saw all this when the whistle blew. About a second before the collision I heard four other short whistles. I could not say how close to the crossing we were when I heard them. I could not say how long after I saw the auto it was before I heard these whistles. I have not been to the scene of the accident recently. The last time I saw the Riverton Crossing was July 30, 1912. I have not seen it since. I did not pay any attention to other buildings at the crossing on the day of the accident. Upon examination of Exhibit M, which shows Mr. Rosenberg's store, I would say that when I saw the auto, it was between the tracks and Mr. Rosenberg's store. The road runs East at that point, and I could not say how far East of the platform it was. I could not say how far East of the platform the auto was when I saw it

nor could I give any estimate of such distance. When I first saw the auto I should think it was about 15 feet from the freight house. My occupation is dairying, which I have followed for four years. I was farming before that. I have been dairying and farming all my life. The only experience I have had in measuring distance is by stepping them off for the purpose of setting fence posts. Am now 25 years of age. The auto was about 50 feet from the crossing when I saw it. I heard the bell ringing as we went by. I did not notice the lights burning. The bell was not ringing when I came back from the car. There was nobody in the seat with me, but the seat behind me was occupied by two men, I think, and the seat in front of me was occupied by a man. I did not notice a woman with a little girl near me, as I was in the smoking car, and did not notice a woman looking out of the window, as there was no woman who sat near me. I have had no experience at running automobiles. I never owned or drove one. I have ridden 12 or 20 times in a Winton, a Ford and an Overland. I am not able to tell the speed at which an automobile is running while I am on another moving object, and if I were on a moving object like a street car and saw an automobile coming towards me, I don't think I could tell the rate of speed that it was moving at. I have not discussed this accident with anybody before seeing Mr. Jackson, and it had practically passed out of my mind before talking with him, but as soon as he spoke to me about the accident it

came back to my mind. The only thing that I noticed particularly about this occurrence was the fact that the left wheel was skidding. I did not see it when it stopped skidding because it was done so quick. The car that I was on was moving about 30 or 35 miles an hour." Q. At 35 miles an hour you would be running at a speed of about 3066 feet a minute, would you not? A. I could not swear to that. Q. That would be 50 feet a second—now, how long a time was it between the time that you saw the automobile before you struck it? A. It seemed like about a second or two seconds. Q. If you were moving then at the rate of 35 miles an hour, you must have been 100 feet away before you saw the automobile, is that correct? A. No, sir. Q. You are sure it was 50 feet? A. Somewhere about 50 feet. (Continuing.) "That would take, about a second, and during that time I observed a car approaching the track, and that the wheel was locked, and I also observed a man standing up in the automobile and the ringing of the bell."

#### Re-direct Examination.

"It takes no longer to observe a man sitting than it does when he is standing. I could not estimate the speed at which the auto was coming towards the track. I was in the smoking compartment of the car near the front end, and there is no compartment between that compartment and the motorman. I was in the second seat from the front and against the wall. The two front seats face each

other, and if one were sitting in the first seat, he would be facing toward the rear of the car with his back to the front. When Mr. Jackson came to see me two weeks ago my mother and father were present."

Re-cross Examination.

Q. You say you saw the Doctor stand up in the automobile? A. Yes, sir, when I seen him he was standing up. Q. Was he standing up when you first saw the automobile? A. I think he was. Q. You think he was standing when you first saw it? A. I think he stood up when he was about 10 feet of the crossing, or something like that. Q. So that when you first saw the automobile he was not standing? A. I could not swear to that. (Continuing.) "The first thing that I noticed was the wheels skidding, and then I looked to see how many were in the auto, and I think there were four, and I saw the Doctor standing as soon as I looked to see how many people were in the car. The auto then, I think was about 10 feet from the street car, and after I got off the car and came back to the crossing, the only thing I noticed definitely was the skid marks on the road. That was all that I paid much attention to."

G. E. HERPICK, WITNESS FOR DEFENDANTS,  
TESTIFIED AS FOLLOWS:

"I live in Seattle. Am a moving picture operator. Have lived in Seattle nearly a year. I was in the employ of the P. S. E. Ry. as collector, col-

lecting tickets in the front of the car and acting as brakeman, too. I was on the train involved in this collision. I was employed by the P. S. E. Ry. Company at the time, but not acting as collector, but just riding to Tacoma. I was seated in the second cross seat from the front end of the front compartment, which is the smoker; that is really the third seat back from the front. There is a shorter seat up in front and then one cross seat, and then the next, and I was in the second cross seat about 6 or 7 feet from the window looking from the body of the car out on the platform, on the right hand side. As the train was approaching Riverton, I was sitting next to the window with the window open, looking out most of the time, and as the train was approaching Riverton there were two long and two short blasts of the whistle blown just after we left Allentown, which is the regular road crossing signal. I heard other whistles afterwards just a second before we hit the crossing. There were three or four short blasts of the whistle. I did not hear the electric bell ring, as we passed over the crossing, but I saw the auto before the collision. I should judge it was about 50 or 55 feet from the crossing. The front end of our train was about the same distance. The auto was moving. I had been a collector on the limited train of the Interurban about two years, and in that way became accustomed to, and able to estimate the rate of speed at which the train was moving, and have had quite a little experience in riding in automobiles. Have never driven one my-

self. I never paid much attention to the speed of an automobile. When I first saw the auto I think our train was moving about 30 or 35 miles an hour, and the auto was running a little slower than the train. I should judge it was running from 18 to 20 miles an hour. I don't know whether the rear wheels were skidding or not, and I did not see the auto up to the time of the actual collision. There was nothing to cut off my view of the auto while I was leaning out of the window looking in that direction, but when the auto was within 2 or 3 feet of the collision I did not see it, as I took my head in. After the accident the train passed the crossing and stopped so that the center of the car was about opposite the third telegraph pole, counting from the pole that stands in the North end of the freight platform, which would be the first one, and the body of the car would be opposite the second pole South of that. I got off the train and went back to where the accident occurred and stayed there until the train which had the accident pulled out going South. I was at the crossing when the South bound local pulled in and the bell was ringing as it came in and continued to ring until it was cut out by the North-bound limited, just a little North of the crossing. I am familiar in a general way with the operation of those electric gongs or danger signals. I think the cut-in contrivance is about 1000 feet North of the Riverton Station, and when the Southbound train passes that point it starts the bell ringing, and it rings until the third rail shoe pushes over a small

rail and someway through electricity it cuts out that bell. This cut-out is located South of the county road about 20 or 25 feet. I got off the train immediately, and the bell had been cut out by the Southbound limited, and was not ringing when I got back to the crossing. The Southbound local started it to ringing again, and as the local did not go over the crossing at Riverton, the bell continued to ring until the Northbound limited came along; which was a half hour or a little better afterwards. The Northbound train stopped the bell ringing as it passed over the cut-out North of the crossing. I made no particular examination of the county road at the crossing. I saw fresh skid marks on the road, but did not pay any attention to the length of them. I don't believe I have much idea as to the length of the skid marks, but am positive they skidded 20 feet. I know that from a glance that they were that much, but I did not make any examination of the skid marks at all. I do not know why I drew my head back into the car upon seeing the auto except that I saw that there was going to be a collision and I did not want to get any closer to it than I was. The motorman and I went down to the train that we had ridden on and there found that the front right hand step was broken and the pilot hanger, or brace, or hanger, was broken, and we had to take the pilot off. The pilot hanger is an iron hanger about 3 inches in width and one inch in thickness; this was broken off on one side. This is right close to the front end. The pilot goes out to the front

end of the car just about even with the front of the car, and this hanger is back a little farther,—far enough to be used as a brace and hanger together. This hanger is fastened on the beam, say a foot and a half or two feet from the front end. It was the one on the right hand side that was broken. It is one continuous iron bar that runs horizontally and then the ends are bent up at right angles and fastened to the side of the car, and then down below the flat iron is the pilot fastened or bolted on, and it was the right hand side of that iron bar or pilot hanger that was broken. This pilot is sometimes called a cow-catcher, and is made mostly of wood. It was not broken, only the hanger.”

#### Cross-examination.

“The train was about 50 or 55 feet from the crossing when I first observed the automobile, and I was sitting with my head out of the window. I did not notice right at that time how many were in the auto. I did not notice one of the occupants standing up. I observed the two long and two short blasts of whistles just after we passed Allentown, because I was used to them day after day, and always noticed such things. I would have noticed it if the whistles hadn’t been blown, and I noticed if they were blown. These were blown just after we left Allentown, which is about a quarter of a mile from Riverton, and the next whistle that I heard was just before the accident. These were either three or four blasts, and the auto was 50 or 55 feet

from the crossing. I did not notice any buildings beyond it, although I was familiar with Mr. Rosenberg's store and the freight shed. The auto was a little East of Rosenberg's store when I first saw it, about 35 feet East of the store front. I did not notice the auto wheels and I did not notice whether the occupants appeared to be conscious that they were approaching a train, and I could not tell whether the chauffeur appeared to be stopping the car or not. I came back immediately and saw the auto. It was then back in towards the freight shed on the South side of the county road West of the tracks, about 10 feet West of the rail, turned about parallel with the tracks within a foot or two of the freight shed, and then I noticed Mr. Rosenberg, who was about the only person around there that I knew. I noticed a lady with Mr. Rosenberg. I did not see an automobile on the East side of the track or any other automobile there besides the one damaged, nor did I see a delivery wagon with a span of horses attached to it, nor did I notice a team approaching the crossing as we were approaching. I did not notice the exact distance between the end of the skid mark and the track, but it did not extend clear to the track. I should think there was about 10 or 11 feet between the track and the skid mark. It may have been as much as 13 feet. There was a good deal of excitement there at the time. The North-bound limited came along about a half hour afterwards, and I stayed there until it came. I did not notice the young boy who just testified being there,

nor did I notice the young man who just testified, nor did I notice him on the smoking car. He must have sat in the seat ahead of me, according to his description. I remember that there was somebody in the seat ahead of me. I don't know whether he had his head out of the window when I had mine or not. I did not notice that."

LEWIS STABLER, WITNESS FOR DEFENDANTS, TESTIFIED AS FOLLOWS:

"I reside in Seattle, Washington, and am a chauffeur; have been such for nine years, and have driven the principal makes of cars and very near all of them, such as Packards, Pierce Arrows, Sterns, and have driven more private work than I have company work. I drove 8 months for Attorney John Hart, of Seattle, who has a 4-passenger Stearns car. I am familiar with the point where the county road crosses the tracks of the P. S. E. Ry. at Riverton; have passed over it many times. Last Summer I passed there at least 4 or 5 times a week, that is a round trip, both ways, and when I was working for Mr. Hart I used to cross it twice a week. I believe I crossed it in July, 1912, but cannot say positive. If a 4-seated Stearns automobile should be approaching the Riverton crossing on the county road coming towards Seattle from the Westerly side of the tracks and should skid 30 feet coming to a stop, with the front wheels very near but not quite on the first rail of the first track, there being 4 persons in the automobile, I should say that

the automobile was then running in the neighborhood of 30 miles an hour when the wheels began to skid, and with the same kind of a machine, with 4 passengers, approaching the crossing at Riverton, driving towards Seattle and on the Westerly side of the track, and if the auto came within 25 or 30 feet of the track and was running at 12 miles an hour, it could be stopped within the length of the car or about 12 feet."

#### Cross-examination.

"The grade at the crossing in front of the store I should judge was 4 or 5 per cent, but after you come down closer to the track it is practically level up close to the track,—that is for about 40 feet. If the evidence should show that the level portion was a distance of 23 feet back from the track and that the grade from 23 feet West is 4 per cent, that would not change my opinion as to the rate of speed that the car was going. Four per cent on a macadamized road makes practically little difference in stopping the car, and I think I could stop as quickly on a 4 per cent grade as I could on a level. A 60-horsepower Stearns automobile weighs between 4000 and 4500 pounds. The shipping weight is in the neighborhood of 4000 pounds, and when it is fully equipped with gasoline and tires, it won't go over 4500 pounds. I know that because I have weighed that class of cars. I am judging the shipping weight of the Stearns from their catalogues. The Stearns sales agent claims 4200 pounds for their car, but I

am not familiar with the actual shipping of such car and my estimate is based entirely on the statements of its agents and salesmen. The gasoline weighs between 6 and 8 pounds to the gallon, I should say 7 pounds, and a 4-passenger Stearns has a 25-gallon tank, and filled it would weigh 150 pounds, and the water in the radiator weighs 50 pounds. The weight of the extra tire depends upon whether it was a demountable rim or loose tires. Both classes are used on 4-passenger Stearns cars. The demountable rims and tires mounted would weigh in the neighborhood of 50 pounds each, and if there was not a demountable rim, it would be 30 pounds. The equipment and tools weigh something. I am now driving for the Puget Sound Traction, Light & Power Company, one of the defendants in this action, and have been in its employ about 14 months as a chauffeur. I have no relatives in the employ of the defendant."

RALPH BRESSLER, WITNESS FOR DEFENDANTS, TESTIFIED:

"I live at Renton. My business is that of conductor for the Puget Sound Electric Railway. I have been in the employ of the company since 1907, and for the last year and a half I have been a conductor, and was such on July 25, 1912. I was at the Riverton Crossing about the time that Dr. Ringer lost his life. I was conductor on the Northbound limited and they flagged me. We probably arrived there 20 or 25 minutes after the accident

happened. Our train was coming from Tacoma to Seattle. When we were coming North we were flagged at Riverton, and I went out to see what the trouble was and the motorman said there was an accident. The gong on the West side of the track was ringing, and this would be cut out by a little rail on the North side of the track when the motorman ran over it. We stopped on the South side of the county road, and remained there probably a half minute, and then crossed over on the North side so as to cut out the electric bell. During the time my train was standing on the South side of the county road the bell rang continuously and not intermittently. That bell is about 12 inches in diameter. On a clear day one can hear the bell from eight to ten hundred feet."

#### Cross-examination.

"I never took any observation to ascertain how far one could hear this bell West of the crossing; have never been on the county road East of the crossing. I have made observation about this bell from the fact that we have the same bell at the town where my folks live, and as I have been coming from home I have heard it, and the physical conditions of the country are somewhat similar except that it is obscured more so than the county road would be at Riverton by buildings, trees and bank, but I have never made any observation of this particular bell except while on the tracks. We were there at the crossing altogether not over 3 or 4 min-

utes, and when we crossed over to the North side that cut out the bell, so that the bell rang from the time that we stopped until we got across and cut it out. I am acquainted with the members of the crew that were on the Southbound limited, but am not related to either the conductor or the motorman. I have talked with nobody about this matter, not even Mr. Tait, whom I never saw until I came into the hall last Saturday when I was subpoenaed, and I did not talk with him then. I don't know how they came to subpoena me. I didn't know anything about the trial coming on until I got a notice and came up here last Saturday. Mr. Jackson probably knew that I was the conductor on the limited and wanted me for that reason. This gong is about 12 inches in diameter, and has a screen over it to protect the bell, and there are five red lights on the top. These were burning at the time. I noticed them because the motorman, when I started to get out, said 'I will cross the crossing and cut out the bell,' and I glanced over as one naturally would, and the red lights were lit. We carry a gong on the cars of the Interurban. I don't know the size of them, as they are down under the front end of the car and are operated by air, and I don't know that I ever saw one. These bells would probably not make as loud noise as the one at Riverton, as it would probably not have as heavy a hammer, and on account of the air working it it rings much faster and much quicker; it is a continual ring,— a good deal like an alarm clock. The air operates the hammer more

rapidly than electricity, as the heavy gongs are made with a slower, heavy beat. I mean by that that the hammer would tap the bell more frequently when operated by air than it would by electricity.

R. W. ROBSON, WITNESS FOR DEFENDANT,  
TESTIFIED AS FOLLOWS:

I live in Tacoma; am a motorman for the P. S. E. Ry. Company and have been for three years. I was the motorman who operated the train that collided with the automobile, in which Dr. Rininger was killed. In operating that train I stood just behind the controller or just behind the very forward end of the car, in front of the smoking compartment, on the right hand side at about 4 feet above the rail. As I was approaching the Riverton Crossing I whistled the crossing whistle shortly after leaving Allentown. This whistle consisted of two long and two short blasts, and was perhaps 800 or 900 feet from and approaching the Riverton Crossing with the current off, so that the car drifted around that curve. In working power around there it makes a kind of jerk on the rear end and it is apt to unseat the passengers in the parlor car, so I was simply drifting around without the use of any power at about a rate of 30 or 35 miles an hour. I did not see the automobile until I got within 50 or 80 feet of the crossing, and I was then running at about 30 or 35 miles an hour. When I first saw the auto, it was about 50 feet from the track. It appeared as if it came right down to

me as I got there. On account of the high bluff you can't see back from the crossing any considerable distance, and just as soon as I got to the point of the bluff I saw the auto, which I should judge was going as fast as I was, and as soon as I saw it I smashed on the emergency air and grabbed for the whistle cord, as that was all I had time to do, and there was nothing else that I could have done, as the current was already off. In order to apply the emergency brake I had to move a handle about 6 inches in from the position in which it then was, which was just one simple motion of the hand, and this sets the air in the emergency brake. At the same time I grabbed for the whistle and from the time that I applied the emergency brake, the car ran about 300 feet before it came to a stop. The car struck the front end, the right, front corner of the automobile, which, as it approached the track, kind of turned diagonally toward the train, and it was the right front step and the right corner of the pilot beam of our car that struck the auto. The pilot beam is a large iron beam supporting the pilot or cow catcher, which is carried by the wide iron beam, and the right hand lower corner of the pilot was struck. I could not say whether the auto had come to a stop when we struck it or not, and I did not notice any of the occupants of the auto before the collision. I just saw the auto with people in it, and I don't know how many, it was so quick that I did not notice how many was in it. The rail and braking equipment were in the best favorable con-

dition for making a good stop, and it was absolutely impossible for me to avoid a collision after first seeing the auto. From my experience as a motorman on crossings and trains of that character, a good emergency stop for a train running at 35 miles an hour is from 350 to 400 feet, and I actually stopped in about 300 feet. The number of my coach was 523 and weighed 43 tons, and was 55 feet 6 inches long over all. I don't know what was its seating capacity. I think we had about 40 passengers at that time. When we came to a stop I got off and went back to the crossing, and in about 15 or 20 minutes after we stopped the Southbound local pulled in, but when we stopped we had passed the cut-out switch on the South side of the road, and when I got back the danger signal at the county road was not ringing, but it began to ring when the local came in, and the local stopped on the North side of the county road, and the bell rang until the Northbound limited came along and cut it out. This would be done by the limited pulling across the county road on the cut-out rail on the North side of the road. I did not notice any skid marks on the road. In addition to my experience in operating electric trains for the P. S. E. Ry. I worked two years for the Spokane Inland Railway, which is an electric line, operating electric and steam locomotives, and I fired about nine years on a steam road, on the Chicago & Alton, and I ran an engine about 17 months on the Oregon Short Line."

Cross-examination.

"I should judge Allentown is 1200 or 1500 feet North of Riverton. I don't know the exact distance. I never measured it. When I blew the crossing whistles I should judge I was about 900 feet North of the Riverton Crossing, as I blew it shortly after I passed Allentown Station, which was less than a minute afterwards. I blew it shortly after the motor got by, as it would not do to blow it while the motor was at the station, but we did not stop there. We made no stops after we left the city limits until the accident occurred. I slowed down in crossing the bridge to a rate of from 12 to 15 miles an hour, and when I passed the quarry station we were going 30 or 35 miles, and between 35 and 40 miles when we passed Allentown, which would be about 1200 feet North of Riverton. I threw off the power just after leaving Allentown. The curve of the track there is sufficient to decrease the speed of the car when it is drifting under its own momentum, but I could not state how much it would decrease the speed, probably 5 or 6 miles an hour. I have operated trains over that track eight times a day for the last three years, and cannot state accurately how much the speed of a car would decrease by drifting under its own momentum, but somewhere between 5 or 6 or 7 miles an hour. When I first saw the auto I was 50 or 80 feet North of the crossing. Upon defendants' exhibit A, I would say that I was at the lead pencil mark "C" when I first saw the auto. It was then West of the

track at the point marked letter "R" on exhibit 'A', and was going toward the track. I have examined plaintiffs' exhibit 1. I notice the Allentown platform shown thereon, and the place marked in red pencil "A" is the cut-in for the current. It was after I had passed that point about 300 feet when I gave the signal whistles. I could not estimate the number of seconds. I was not conversing with anybody between the time that we left Allentown and the crossing, but just about the time that we struck the Riverton Crossing, the conductor came in just before the accident happened. I did not look up to see him when he came in. I was too busy,—I did not look to see who came in. I have had no experience at driving automobiles, and never owned one. I am not able to estimate the speed at which an auto is driven only judging by other objects and would not give an accurate estimate. The moment that I saw the auto I busied myself with attending to the emergency brake and the whistle cord. When I saw the auto I slammed the air on and backed my back up against the wall and braced myself, as we only have to open the glass in front of us. I didn't ring the bell on my car as I didn't have time to. It is operated by air. I testified at the coroner's inquest that was held the next day after the accident, and the testimony that I gave at that time was true. I had been working as an extra man at the time of the accident. I did not do extra work but I handled the regular runs when the regular men laid off. Before the coroner's inquest I testi-

fied that when I first saw Dr. Rininger's car it was possibly 50 feet from my train and that his car at that time was right on the crossing diagonally facing my motor." Q. Did you testify as follows at this inquest: 'Q. Why could you not see that car when you were more than 50 feet from the crossing? A. Because when you are that distance back the bluff keeps away the view of the road; you can't see an object back from the crossing in a direct line with the road over 25 or 30 feet away from the track on account of the bluff'?—did you testify to that effect? A. I did. Q. That is correct? A. It must be. (Continuing.) I also testified that the occurrence happened so quickly that I didn't even know that the auto was stopped; I saw the front wheels turned right to me, and we were on them, and I slapped the air on the minute the car came around the bluff, and my power had been shut off for 200 feet before that." Q. Did you testify as follows: 'Q. What warnings did you give that you were approaching that crossing? A. Two long and two short blasts of the whistle. Q. How far from the crossing? A. Possibly 800 feet. Q. You had a bell? A. Yes, sir. Q. You didn't ring that? A. Yes, sir. Q. You were ringing your bell. A. I was ringing my bell when I hit the automobile'—did you testify to that? A. I did. Q. And was that true? A. I am not just positive now whether or not I got that bell ringing before I hit the automobile or not; I would not be positive. It was done so quick that I do not remember. My bell is operat-

ed by a little valve right alongside the brake valve. I do not remember now whether I started the bell or not. Q. At the time you gave the testimony before the coroner's inquest, it was the next day after the accident? A. Yes. Q. And it is probable that your recollection was better then than it is now? A. Probably so, yes sir. Q. Did you give this testimony at the inquest: 'Q. How long had you been ringing your bell before you hit the automobile? A. When I slammed the air into the motor. Q. What distance is that from the car? A. Possibly 50 feet.' Did you testify to that at the inquest. A. Yes sir. Q. And that is probably correct? A. Yes. (Continuing.) "I also testified that I had shut off my power before I got to the crossing. There is no down grade on the track there, and the power had been shut off 200 or 250 feet before we got to the crossing,—I could not say positively just where I shut the power off, but I know I shut it off shortly after leaving Allentown. It is probable that my recollection was better then than now, and it is probable that I was more correct then than I could be now, because of the fact that it was very distinctly before me, and the occurrence was so close to the date of the examination, and it may have been that I shut off my power about 200 or 250 feet before I got to the crossing, and it may have been a little farther. I can't be positive. I also testified at the inquest that with the power shut off I was still going something like 35 miles an hour. I think that is correct. I think I shut off the power

shortly after I blew the whistle. I would not undertake to say at what rate the auto was proceeding when I saw it. I simply judge its speed by the speed of the train, as I think he was going about as fast as I was. I didn't have time to get excited when I saw him; it was done so quickly, in just an instant. There was just about a second's time between seeing the automobile and the accident. I noticed the location of the automobile when I came back from the car. It was standing at a point that I will mark on exhibit A, almost parallel with the track, and the front wheel slightly toward the track, perhaps 6 to 8 feet away from the track; the rear wheels were back perhaps within about 10 feet of the freight platform here, so that there was between 8 and 10 feet between the rear wheels and the platform. I don't know whether the wheels of the auto were damaged. I didn't pay much attention. The tires seemed to be pulled off the two front wheels. After my recollection is refreshed from the evidence that I gave at the coroner's inquest, I can't just say whether the auto had come to a stop before we struck it or not, because I do not positively remember. The minute it came into view I slammed the air on the motor and we met right on the crossing; it was done so quickly I could not say positively whether they were moving or not when we struck them. While I testified at the coroner's inquest that it had stopped, I cannot say whether that was correct or not. I didn't have time to notice the occupants in the car. At the time the car struck the

automobile, I was standing at the controller with my back up against the front compartment of the smoker and my knee against the controller in that manner, and as I remember I threw one hand up to protect myself from glass in case it came through the window. That was on the right front corner of the vestibule next to the auto. I did not stand on the left side at the time of the impact. I do not know whether I could have seen the auto when my car was 133 feet North of the crossing or not. I have never observed how near the crossing one must be in the county road in order to see a car all the way on the West track to Allentown, and I do not know how far West of the track you could see an auto when you were 133 feet North of the crossing, but I should think one could when 50 or 60 feet away. I am now running six times a day over this crossing and formerly ran eight times."

ISAAC GRIBBIN, WITNESS FOR DEFENDANTS, TESTIFIED:

"I live at Milltown; am now, and have been for six years, a conductor on the P. S. E. Ry., and was the conductor in charge of the Southbound train that collided with Dr. Rininger's automobile. I remember that there was the regular road signal given by the motorman before reaching the River-ton crossing, consisting of two long and two short whistles, and I think the train was a little past Allentown, which is in the neighborhood of 3000 feet North of there. I should think the train was

running between 30 and 35 miles an hour as it approached the Riverton Crossing. The electric gong was ringing when we passed over the crossing, and I should judge that our train ran about 200 feet South of the crossing before it came to a stop, and the bell did not continue to ring after we passed the cut-out just South of the county road. I saw the automobile just before the collision. I had opened the front door of the smoker to go out on the front platform. The train was probably then 20 or 25 feet from the crossing as I opened the door and saw the front end of the automobile. The automobile was then right along side of the track. I could not say whether it was moving or standing, but I saw the front end of it. It seemed to be headed toward the rear of the train. It could not have been a second from the time I saw it before the train struck it, and as the train came to a stop I jumped off and ran back. The electric bell was not ringing but it rang while I was there when the local pulled up behind us some 15 minutes afterwards. The local stayed there probably 30 or 35 minutes, and the bell ceased to ring when the limited from Tacoma pulled in across the crossing to the cut-out on the North side of the crossing, which cut the bell out. I made no examinations to see whether or not there were any skid marks on the road, and knew nothing about that.

#### Cross-examination.

“Our car was delayed at the crossing something over an hour, and during that time I was helping

take care of the wounded and getting hold of our dispatcher, flagging the local train and helping to get our motor ready to move South. I did not observe any skid marks on the road—I did not take any notice—and saw no other automobiles there, nor any team at the time of the accident, but I saw a couple of automobiles come in from Seattle. How long afterwards I could not say. I did not see a delivery team or any team that I remember of West of the West side of the track. I should judge the Allentown Station is 1200 or 1500 feet North of Riverton, and it is about the same distance between Allentown and Quarry. It was my duty to collect the tickets and fares from the passengers and I had a fair sized load that day. I do not remember the number, but I should judge we had 35 or 40 passengers. I had completed collecting the fares when we reached Riverton. We usually got through before we left Georgetown. I went into the front vestibule of the car because we exchanged identification slips at Renton Junction while the train is running, and I wanted to fix my hook to throw off my slip, which is thrown off from the front end of the moving car. As a rule they slow down a little for that. We had not yet reached Renton Junction, and I went in the front vestibule to be prepared to exchange such identification slips. Renton Junction is 2 or 3 miles farther South of Riverton. We exchanged by handing the hook off to the operator and he hands one to me. The motor-man has nothing to do with this. When I went in

the front end the motorman did not look around to identify me or see me come in, and the moment that I got in the vestibule I glanced out and saw the automobile, and the car was then, I should judge, 20 or 25 feet from the crossing. I did not hear the motorman blow any whistles there. At that time the auto appeared to me to be right along side the track. I could not tell whether it had stopped or was moving, as it was faced towards us, and it was the overhang of the car or the attachments to the overhang of the electric car that struck the automobile. I did not see any passengers in the auto. All I saw was its front end. I heard the bell ringing as we approached the crossing 25 feet from it. I only heard one bell ring, which was the signal bell. I testified at the coroner's inquest which was held the next day after the accident when the events were fresher in my mind than now. As I opened the front door of the car, the motorman slapped the air on. At the coroner's inquest I testified that I was in the front end with the motorman, as we registered a slip at Renton Junction. I opened the door and turned around and glanced out of the front door and saw the auto and he slapped the air on immediately, and that was correct. I also testified that I should judge that we were not over 15 or 20 feet from the auto when I first saw it, as it happened so quick I had no time to realize anything; that the brakes and air were applied when we were within 15 or 20 feet of the auto. It might have been a little bit more than that. I further stated that

I did not know any reason why the motorman did not see the danger of this collision until he was within 20 feet of the car except on account of the obstruction of his view. As I entered the door the motorman may have taken his eyes off of the crossing to look at me, but I do not know whether he did or not. I have not talked this matter over with anyone since I gave my testimony before the inquest, and the events are not as fresh in mind now as they were at that time, and it is probable that I could have been more positive then than now. When the whistles blew at Allentown I was in the middle of the car close to the front end back of the smoker. My recollection that the whistle blew at that point is due to the fact that it is the custom and I also remember distinctly of hearing the whistles and glancing out of the window at the same time. I did not hear any whistles after that, not even when the collision took place, and yet I was in the front end, and it would have been an unusual occurrence for the whistles to have blown at that crossing unless something had happened, and if the whistles had blown right at the crossing I would have realized that something had happened if I had heard them. When I was in the vestibule, the whistle was up over my head about 4 feet. It makes a loud, distinct noise, and on a still day can be heard quite a distance, for a quarter of a mile or a half mile, and yet I did not hear it blow at the crossing, as I would not have heard it because I was pretty busy about that time getting the door shut and trying to get

the side door open to get off. My mind was pretty well occupied, and if I heard the whistle it has slipped my mind. At the inquest I testified that the motorman had said nothing to me about this collision, but I have since talked with him, and Mr. Robson told me he had not seen the auto until it was right on to them."

#### Re-direct Examination.

"The bell that I heard as we passed over the county road was the electric danger signal that stands on the side of the road. I do not know whether Mr. Robson, the motorman, took his eyes off of the crossing in front of him and turned around to look at me, as I came through the door, or not. The report of my testimony given before the Coroner's inquest in which I am reported as saying, 'When I opened the door he took his eyes off the crossing and turned around to see who it was,' I do not think is correct, and in preparing this identification slip to throw off at Renton Junction, it is thrown off through the side door on the front end of the left hand side of the car, which would be on the opposite side from that on which the automobile was standing or coming, and as I got on the platform and opened the door I was facing South, but the moment I saw the automobile I turned and shut my back door and started for the side door and got off there. This door is a sliding door between the front end of the car and the smoker, and the moment that I stepped on the platform I

turned facing the sliding side door for the purpose of closing it. I then turned facing to the left, to get out the side door on the left hand side, so that my side was towards the track ahead of me; I had not opened the side door before the collision, but I opened it afterwards just as soon as I could get it open, and then jumped off the train and ran back to the crossing before the train came to a stop."

#### Re-cross Examination.

"I only heard one bell ring and at that time I was not very busy getting off the car; was just opening the door to get on the front end, but I did not notice the distance that I was then from the bell,—in fact I could not say because the door was shut, but we were close to the bell. I could not say how far the bell was from the car, and I should judge we were just pulling by the platform that is there when I started to open the door. There was a gong on the car, which was practically under me when I was opening the door."

#### NELLIE M. RININGER RECALLED ON BEHALF OF DEFENDANTS.

"I am the surviving widow of Dr. Rininger."

Q. I would like you to state whether or not his estate has been finally distributed to his heirs. (Objected to as irrelevant, immaterial and incompetent. Objection overruled, and exception noted.) It has. (Continuing.) "He left no heirs besides myself and my daughter, but he left two bequests to his sis-

ters. My daughter and I have received the balance of the estate after paying the two bequests." Q. I wish you would state what the estate amounted to which you and his daughter received. (Objected to as irrelevant, immaterial and incompetent.)

"The COURT: Objection overruled. Gentlemen, you will understand that this is simply a circumstance in determining the amount of the damages that the plaintiffs in the case may have suffered by the loss of the Doctor. It is one of the circumstances which you will take into consideration, because when a man is living what the plaintiffs in this case received from him would necessarily not be a part of what he left to them."

(Exception noted.) "We received notes to the value of \$60,000. These are the mortgage notes, the balance due for the sale of the hospital, which we sold at less than its value, and we received the notes in the distribution. I also received \$5,437, and there was the bequests of \$2,500 that he had given to each of his two sisters, which was taken from the share of the little girl, and there was \$137 besides his book accounts, which are still on the books, something like \$30,000, so that the little girl and I received together the \$60,000 or notes which are secured by a mortgage on the hospital property. I own half of it and the little girl owns the other half. In addition to that I received \$5,000 in cash as my share was more than hers, because each of the Doctor's sisters received \$2,500 apiece, it being community property. The fees of the executors

and attorneys were paid and the amount deducted from the estate before its distribution and before I and my daughter received the shares I have spoken of. This is all that I received from the estate outside of the life insurance which I got at the time of his death."

#### Cross-examination.

"The life insurance that I got was a small amount, and that life insurance of \$45,000 went to help pay the debts of the new hospital building, which was in the process of being built at the time of the Doctor's death. We had given up our home and the Doctor was building this private hospital for his private surgical work on the corner of Summit and Columbia in Seattle. It was not finished at the time of his death, but under roof and the office partly finished. We finished it up and I had to sell it, and this \$60,000 represents the unpaid portion of the purchase price. The little girl was 14 years of age on February 2nd of this year."

(HERE DEFENDANTS REST.)

#### ELORA LAMB, RECALLED ON PLAINTIFFS' BEHALF, TESTIFIED:

"I have heretofore testified that I had frequently been on the platform of the passenger station at Riverton waiting for the Interurban trains prior to July 25, 1912. During that time I had occasion to observe the operation of the electric gong on the post at the crossing. During the years 1911 and 1912 I had been at this station once a week, as

I was going home to see my parents, and before the accident, while I had been waiting for cars to come back to Seattle late at night I would be in the waiting station, and if the gong did not ring I would have no way of telling when the car was coming, so I know it did not ring regularly at times. I remember times when the approaching car did not ring the bell, and this was a couple of months before the accident. I have noticed more than once before the accident that the bell failed to ring. I have also noticed that the bell rang irregularly and would only ring a tap now and then as the cars approached. I noticed that when a Northbound car came in, which would be 700 or 800 feet before it came to the crossing, it would then cut out a little ways on the other side of the crossing, and when the car got down to Allentown the bell would start ringing again when there was no Southbound car approaching. I also observed that the bell would work intermittently, that is it would ring a few taps, then stop and then ring again. I noticed this during the year 1912 before the accident. During the year 1911 when I observed the bell ringing irregularly there was with me Mr. Roy Percy and his brother, Frank Percy."

Cross-examination.

"There were other occasions besides the one referred to two months before the accident when the electric gong failed to ring on the approach of a train, but I could not state the date. On the occasion two months before the accident when I observed that the bell failed to ring, it was the 11:12 train

at night and I missed it. It was the local. I wanted to take the 11:12 Northbound train to Seattle on a Sunday evening. Mr. Roy Percy was with me. He is not in court. Neither of the Percy boys has been in court during the trial. At the time, just he and I were in the waiting room and were talking. This waiting room is on the East side of the track and on the oposite side from the bell. The door of the waiting room was open—there is no door on it. I can swear positively that on that occasion two months before the accident that a Northbound train came there and the bell did not ring; I did not hear it at all and I missed my train by it. I was seated right where I could see the lights and looked to see if they were burning. I could not hear the train coming from the inside of the station. When the train approaches it makes as much noise as the bell—when it gets so close that it won't stop, and I missed my train that night. This little station sets back from the East rail and is shown on Exhibit A, and appears by the square place on the platform marked "Depot," and the electric bell is shown also on the plat. The width of the platform is about 12 feet, and the train coming from the South on the track passed right by the platform. The windows in the station were closed. They don't open, and there was no door there at all, and I didn't hear the train until after it got past. When the train got as close to me as the distance from where I was to the bell it would make as much noise as the bell, and would then drown out the sound of the bell."

MRS. RININGER, RECALLED, TESTIFIED AS  
FOLLOWS:

"I desire to correct the statement in my testimony given this morning, as I did not intend not to describe all of the property. There is some real estate that I did not mention. It was not divided. There is a lot at Lincoln Beach, one at Georgetown, and two at Bremerton. There is also some bank stock worth \$2600. I estimate the whole as worth about \$10,000."

W. H. MORRIS, WITNESS ON BEHALF OF  
PLAINTIFFS, TESTIFIED:

"I live in Seattle. My occupation is lawyer; have been practicing in this city twenty-three years. I knew Dr. Rininger during his lifetime. I was present at the scene of the accident shortly after it occurred. I observed some skid marks on the highway just West of the crossing. This was on the West side of the Interurban railroad track, and in coming from the West of the track the skidding would be, in my opinion, nearer to the right hand side of the road than the left hand side. My wife, one of my sons, some company and myself were going out South of Riverton, and as we neared the Riverton junction I saw and recognized Dr. Rininger's car. There were a number of persons standing around and I alighted from my car and immediately learned that Dr. Rininger was killed. Then I turned my automobile to this particular track. I did not measure the skidding but stepped off the distance

from where I should judge, if the car were going in an Easterly direction, it would be the West wheel commenced to skid, and from the place it commenced to skid, as far as I could follow the demarcation, it was seven steps, and I should judge that I stepped about three feet, so that I should say the length of the skidding was 21 or  $21\frac{1}{2}$  feet. If this machine that skidded was coming in from the South, the skidding was on the left hand side, or the left hand wheel, and the place where the brake was applied was light and as the car continued to travel it seemed as if the casing had burned into the ground so that it was very plain to be seen."

#### Cross-examination.

"It was probably 4:00 to 4:30 o'clock when we reached the Riverton Crossing, and there were 7 or 8 people there at the time. When we reached the crossing I don't think there was any Southbound train standing on the North side of the county road. One may have come in while I was there, but my impression is that it did not. The reason I think so is that my attention was directed to Dr. Rininger. I went out on the track and walked up to the little shed and removed the tarpaulin from off Dr. Rininger as he was lying with his feet down hill, and looked at his face, his clothing, and if there had been a train there I think it is very probable I would have noticed it. While I do not recall any train coming into that crossing while I was there, it may have occurred. We were there from 10 to

15 minutes, and then we continued our journey down to Mr. Wolf's. The road was dry, but there was not so much dust at this particular place; the roadbed was pretty solid. On the right-hand side of the road as you come in from the South I think the dirt was softer than it was on the center of the road. I do not think that it was possible for the 7, 8, 10 or a dozen people who were there to have obliterated or obscured a portion of those skid marks. I don't think those skid marks had been touched. It seemed as if everybody was standing back and speaking about them and pointing them out. They were rather being protected instead of being destroyed or defaced in any way. To the best of my recollection the Easterly end of the skid marks came up within an automobile's length of the Westerly rail, and then they were abruptly broken off. I did not see the limited that collided with the automobile. I don't think it was there at the time. I do not know anything about the train that collided with the automobile, although I understand it was a train going from Seattle to Tacoma, and was a one-coach limited. I do not remember that I saw a train standing South of the county road while I was there, and if it were South of the crossing it was some distance farther South than where Dr. Rininger's body was lying, and it may have been there and I didn't pay any attention to it because my mind was centered upon Dr. Rininger. In all the time that I was there I do not recall seeing any Puget Sound Electric Railway car either

North or South of the crossing, though it may have been there and I did not pay any attention to it."

#### Re-direct Examination.

"It is very probable that if a coach were 200 or 300 feet South of the crossing and beyond the freight shed that I would not have noticed it. In the first place, when I walked up there I was told Dr. Rininger's body was down there, and I thought the man meant that it was in the hollow, and I walked down to the hollow and I looked around and I could not see anything, and then I asked him again where it was, and he pointed over under the shed, and then I walked down the road to the car track, and in walking up along the rails, passing the cattle guard, stepping over that, I watched the condition of affairs, the effects the collision had upon Dr. Rininger's body and the things that were along there and the clothing; I was watching that particularly, and when I reached the shed, I discovered his body; my eyes were centered upon that, and after I finished looking at him I turned around and walked back, and I paid no attention to anything else. There might have been a dozen coaches standing scattered around there and I would not notice them. I knew Dr. Rininger very well during his lifetime, and saw him that afternoon previous to leaving Seattle. The first knowledge I had of the accident was when I saw the car backed off on the right hand side of the road as you come from the South. The effect of the knowledge of the accident to the Doctor is some-

thing that I do not believe any human being can explain or describe. I was not excited. It was the reverse."

N. N. STEVENS, WITNESS ON BEHALF OF PLAINTIFFS, TESTIFIED:

"I have been a photographer for 15 years and resided in Seattle in July, 1912. I recognize this picture designated as Plaintiffs' exhibit 14, as I took and made the picture on the night of the accident, and it is a true and correct representation of what it purports to show. I was out there for the purpose of taking this picture, and did not notice any skid marks of the wheels of an automobile on the highway at the Riverton crossing. I was not interested in that. I was out there to make a picture for the paper and that was all I was interested in, and of getting the best picture I could from the newspaper standpoint, so I cannot say anything about the skid marks. We left here a little after 6 o'clock and drove out in a machine, and it must have taken us a half hour to drive out there, as we drove pretty fast, and it was probably two hours after the accident when I got there. I do not know that the automobile was in precisely the same position as it was immediately after the accident."

O. C. THOMPSON, WITNESS ON BEHALF OF PLAINTIFFS, TESTIFIED:

"I am running a store out near the Riverton Crossing, and have been for about 7 years. I have

lived out there  $8\frac{1}{2}$  years, and have been familiar with the Riverton Crossing for 8 years; have been familiar with the alarm or warning gong maintained on a post just North of the highway and West of the tracks for  $2\frac{1}{2}$  or 3 years, and since it was erected. I have observed that during the year 1912, and before this accident, irregularities and failures of this gong to ring when a train was approaching. At times the bell would not ring at all when a train was approaching or otherwise, and at other times it would ring when there was no train coming or otherwise. The bell has been plugged by people living nearby there so that it would not ring at all because it kept ringing at night and kept people awake. At other times when the train approaches the bell starts ringing and after it makes the crossing it stops, and then when the train is a thousand feet past the crossing it rings for about 2 seconds and then it stops. I have noticed that this bell would fail to ring when trains were approaching and would continue to ring after it was cut out by the train that went by quite frequently during 1912, and before this accident."

#### Cross-examination.

"I have lived out there  $8\frac{1}{2}$  years. My store now is about a block from the Riverton Crossing, and it has been for the past four years. It is the Southbound train that disconnects the ringing and then starts it again after it passes the crossing a thousand feet. I have heard and did hear during the

early part of July, 1912, between the first of January and the 25th of July of that year, the Southbound train start the bell to ringing when it was about a thousand feet North of the crossing, and when the bell was in working order it would ring continuously until the Southbound train passed over the county road. I believe the cut-out is right at the crossing of the Southbound track. It starts about a thousand feet South of the crossing and the cut-out is immediately South of the county road for the Southbound trains, and when the Southbound trains would cross the county road and come in contact with the cut-out immediately South of the county road, the bell would cease ringing and it would not ring any more until some other train approached. I could not give the dates when within a month prior to this accident I saw a Southbound train coming and the bell did not ring at all before the train passed the crossing, but I actually observed quite a number of times between the first day of January and the 25th of July, 1912, a Southbound train approach when the bell failed absolutely to ring, but I could not say definitely how many times. I do not know whether there were any trains at or near the crossing. There might have been. I do know that the bell has stopped ringing when there was a train at the station and another coming. I have noticed that; but the times I have enumerated as the occasions when a Southbound train would fail to start the bell to ringing was not when the bell stopped ringing by reason of a train being at

the station, but I wish to testify as a fact that the Southbound train would fail to ring the bell when there was no train standing at the crossing, although I can give no dates or state how long before the accident it was or in what month, but it would not be three months apart at the time that I heard it, and I do not think I would have thought of it if these occurrences had been as long as three months before the accident. It do not believe it was as long before the accident as that."

B. A. KRANDALL, WITNESS ON BEHALF OF PLAINTIFFS, TESTIFIED:

"I have been following the occupation of automobile mechanic for 12 years and have resided in Seattle 4 years. I began driving and operating automobiles continually in 1903, but I worked a good many different cars and operated different makes of cars and have driven in races. I am familiar with the driving and operating of automobiles on highways. I have had 5 years' knowledge of Stearns automobiles and knew Dr. Rininger during his lifetime, and was familiar with the automobile involved in this accident, which was owned by him. I helped repair it different times before the accident and after the accident I straightened it up. I think, without the extra tires, it would weigh between 4550 and 4700 pounds. At times the Doctor carried two extra tires. I have had some experience with automobile skidding." Q. I will ask you to state, if you can, from your knowledge of auto-

mobiles and the operation of them, and also from your experience in operating them, whether or not the speed of an automobile can be determined from the skid marks that it may make on the highway after the application of brakes so that the wheels are locked. A. That would be pretty hard to decide —the speed of the machine according to the skid marks. It would depend a great deal on the kind of tires that were used; the non-skid tires—there is the staggered tread tire and there is the plain tread tires, and I think on each one of those you would find that there would be a difference at the same speed in the length of the skid marks. Q. Would there be any different results from the same tires at different times? A. Yes, sir, there would. It would have to be produced—for instance, I can take a machine and I can go out here rolling at a speed of say 15 miles to 20 miles an hour, and one time I would skid probably 10 feet, and I would try the same one and I would skid pretty near 20 feet at the same place. I was not familiar with the railroad crossing at Riverton in July, 1912.”

#### Cross-examination.

“The Doctor kept his automobile at the Stearns Auto Company, 1409 Broadway, and I was the foreman of the shop at that time. I saw his machine almost daily, but don’t recall what tires were on the machine at the time of the accident. I could not say whether he usually used non-skid tires or not. I know at several times he has used non-skid tires and

that he tried the Dayton airless tires. A non-skid tire would not skid as easily as other types. The non-skid tire would prevent a machine from skidding where the brakes had been applied so as to lock the wheels, that is if the non-skids were new. If the non-skids were worn until they happened to get down to the plain surface they would not be any more effective on a pavement than a plain tread tire, and I don't think it takes very long for a staggered tread tire to wear down to smoothness. The non-skid tire is a preventive for slippery conditions. The non-skid tire will not skid as far as a smooth tire."

Q. Assuming that there was a non-skid tire that had not been worn smooth on the machine, and as a matter of fact that it did skid 30 feet on a dry macadam road, wouldn't it indicate to your mind that the machine was running at a higher rate of speed at the time the wheels were locked than would have been the case if a smooth tire had been on the machine?

A. That is a pretty hard question to answer. (Continuing.) A non-skid tire will not skid as far as a smooth tire. There are things which have to be considered in a number of different ways. For instance, if your brake system is not properly adjusted one wheel will turn and the other will lock itself, and you car will have a tendency to slide one way. If a non-skid tire skidded for 30 feet it would undoubtedly indicate that the machine was going at a higher rate of speed than if both wheels had been locked and it had skidded 30 feet with a smooth tire. If we were to assume that for some 20

or 25 feet West of the tracks at Riverton the county road is practically level, and from that point back a distance of 300 feet there is a down grade towards the track of 4 per cent, and that the automobile which Dr. Rininger owned and with which I am familiar, contained 4 passengers, including the chauffeur, and on reaching a point near the track, driving Northerly towards Seattle, the automobile skidded such a distance as brought it to a stop with the front wheels very near but not quite on the first rail of the first track that you come to, that both wheels did skid a distance of 30 feet, and that it is a macadam road and that the road was dry,—it would be pretty hard to state how fast the machine was traveling. I would not like to make any statement there as far as the speed is concerned because it is very hard to know just how fast a car is going by the length it will slide. I can take a machine out on any kind of pavement which you suggest, and in one stop I will make I will skid 30 feet and the next stop I will make I will apply my brakes so that I will stop in about 10 feet.” Q. Suppose you applied your brakes the same in making the different tests, with precisely the same degree of force, on the same machine, made one stop immediately after the other, beginning each stop while running at the same rate of speed, with the same load on your machine, the pavement being in exactly the same condition, would you not make the same stop in practically the same distance? A. I doubt it, by a margin of 5 or 6 feet at the second try, as we have

proved at different times that I have entered into braking contests for different machines,—those were several years ago when they held those,—and the braking capacity of the car would vary a great deal, and you can stop in that short distance—I could mention to you different instances where we have tried it with the same car two or three different times. Now this particular car here of Dr. Rininger's I know about, because that is one thing that he insisted on and he always had his chauffeur to keep his brakes adjusted properly, so that he always played safe. (Continuing.) "I have been in the automobile business 12 years, and during that time have actually driven on the road various types, kinds, weights and characters of automobiles. I now wish to acknowledge that I cannot form a reasonably accurate conclusion as to the rate of speed at which an automobile would be running if it skidded 30 feet on a dry macadam road."

#### Re-direct Examination.

"I am now examining the picture, Plaintiffs' exhibit 14, with a glass, which is the picture of Dr. Rininger's automobile after the accident, and I observe that the rear tires were plain smooth treads, as are also the front tires."

#### KENT BRODNIX, WITNESS RECALLED FOR PLAINTIFFS, TESTIFIED:

"I now recall the character of the tires that were on Dr. Rininger's automobile at the time of the

accident. Both the front and the rear ones were smooth treads."

Cross-examination.

"I could not say how long the smooth tires had been in use before the accident. They had been on for some time, excepting one of them which was put on that day, and I knew when I started out that morning that we had smooth tires on. It would depend upon the conditions as to which kind of a tire you could make the quickest stop with. On a wet pavement, as a general thing, you can make the quickest stop with a good non-skid tire, and if the road is a dry macadam road, absolutely smooth, I do not think it makes a great deal of difference. I should think it would make no difference."

(HERE THE PLAINTIFFS REST.)

DEFENDANTS RECALL THE WITNESS  
BRESSLER, WHO TESTIFIED AS  
FOLLOWS:

"I was conductor on the Northbound local that stopped at Riverton shortly after the accident, and got off the train. While there my attention was called to skid marks on the county road West of the tracks by passengers on the car. I inspected these skid marks while standing in the rear end of the car. These skid marks were in a straight line, and parallel with the rear end of the car, as we had backed up onto the wagon road to receive the passengers. It was about 18 or 20 feet from the rear end of the car to the end of the skid marks nearest

to me. I could see them distinctly, and it seemed to me that the distance between the Easterly end of the skid marks from the point where they stopped to the Westerly rail of the Southbound track was 10 to 12 feet, and I should judge that the skid marks extended about 30 feet."

#### Cross-examination.

"I made this observation while on the car. When I first got off the conductor said they wanted us to take those two ladies into town, and I backed my train up on the North side so as to take them in the rear end of the observation car, and I opened the door to get some of the chairs out, and one of the passengers got up and he said he would help me to take the lady in. He said, 'Isn't that an awful long skid for the automobile?' I looked at it and I said 'Yes, it is something about 30 feet,' and he said 'It is all of that, if not more,' and he stood there until they brought the nurse on the cot and mattress and we had her inside. We were at that point 5, 6 or 7 minutes. This morning I testified that we were there 4 or 5 minutes. Q. How far did you say the east end of the skid mark was from the track? A. I should judge about 10 or 12 feet from where I stood—say 10 feet. I do not know the length of the automobile that skidded; it could not skid any nearer to the tracks than its length unless the compulsion of the train hitting it would make it look like that. I was standing on the car, which was Northbound, and the West rail of the

Northbound track is about 10 or 12 feet West from the West rail of the Southbound track, and I was then straight with the skid marks so that the end of the skid marks was 20 feet from where I was. If the end of the skidding was 13 feet from the west rail, then I must have been 23 feet from the end of the skid marks." Q. And do you want to tell the jury that you could look at a line opposite to you beginning 23 feet from you and extending westward, or away from you, and could tell how long it is? A. Well, from only what the passenger that was down there said. (Continuing.) "I could judge about the distance. I have had no particular experience in measuring distance. When I was young I was in a machine shop, and had no experience in measuring distances. I would say that the West end of this skid mark was 50 feet from me."

(WHEREUPON ALL PARTIES REST.)

MR. TAIT: If the court please, the only remaining defendant in the case, the Puget Sound Electric Railway, now moves that the jury be instructed to return a verdict in favor of the defendant and against the plaintiffs, upon the ground that as the testimony now stands it fails to show any negligence on the part of the defendant company, and that it affirmatively appears from all of the testimony that the plaintiffs' decedent, Dr. Rininger, and the chauffeur in charge of the automobile, were guilty of such contributory negligence as to bar a recovery.

THE COURT: I am aware of the conflict of the decisions on contributory negligence and the circumstances under which a court is justified in determining it as a matter of law. The court does not consider it necessary to go outside of this circuit and the decisions that have been made in this circuit that are controlling on this court to determine the question.

The rule, of course, is based upon reason. The general rule is that the question of negligence and contributory negligence is a question for the jury to determine and the jury alone, but from the beginning of the decisions in our courts they have ruled that there are circumstances under which the court will determine as a matter of law whether contributory negligence has been shown on the part of the plaintiff so clearly that reasonable minds cannot differ.

As I say, this rule as to what is required of a person at a railroad crossing, is based on reason. At a railroad crossing where trains running at the speed of an Interurban or a steam train running through the country at the speed that this train was authorized in going, the person approaching a railroad crossing is bound to look and listen for their own protection. They cannot depend absolutely on the care taken by those in charge of the trains; therefore the law imposed upon them the duty of looking and listening for their own protection.

In a town, where the street cars are light and

they can be stopped quickly and they are not allowed to run at such a high rate of speed, as there are manifestly usually other things, such as pedestrians and people using the street, to look out for, that rule has been qualified, and a person crossing a street car track is not absolutely bound to so conduct himself; but the court does not understand that this rule has been relaxed so far as steam trains running through the country, or interurban trains, are concerned.

Now the rule that a person is bound to look—the courts all put that first, that is, before listening, and it only requires a moment's reflection to determine the reason. That is, a person who looks and there are no obstructions, is not so likely to be mistaken as the person who listens, because a person looks along the railroad track, if he has reasonably good eyesight, and it is a clear day, and there is no obstruction—if there are any obstructions he can see them, and if there are none he can see whether a train is approaching within such a distance as to threaten him with danger. It is not so in regard to the matter of listening. The unseen conditions: this curve in the bank which has been referred to in this case, or wind that he does not calculate the strength of, may carry the sound away, and there are other things which may interfere with his hearing. But the law places upon one approaching a railroad crossing the duty to make a vigilant and diligent use of his senses, including his eyes and ears, to determine whether he is threatened with danger.

If he cannot see, the law places upon him the obligation of increased vigilance and diligence in the use of his ears, and even the decisions which have been read by the plaintiffs, some of them go to the extent of holding absolutely that if there is anything that interferes, any transient noise that interferes with his listening satisfactorily, then it is his duty to stop and either inferentially go forward and look or wait until that transient noise has passed. If that noise is something he controls, like the noise of a wagon, of course it ceases when he stops.

Now, applying these several principles to this case, and especially relying on the case in the 199th *Federal*, the court concludes that this case must be taken from the jury. That case in the 199th *Federal*, Judge Wolverton uses this language—he recites that the view is obstructed, and then he says 'This imposes upon the plaintiff the precaution of stopping. Now what does that mean? That is not a recital of what the plaintiffs were testifying to. It is a recital of the principle of law as enunciated by that court, whose decisions are controlling on this court. Then the judge proceeds to review what further the plaintiff testified to and in that conclusion what the word 'imposed' means is that it lay upon the plaintiff the obligation or duty of stopping. That is Webster's definition of 'imposes'. If the court had meant to say that was the reason they stopped, the court would have used happier language than the word 'imposed,' and that is still further borne out by the cases which Judge Wolverton cites

—Judge Van de Vanter's decision in the 130th *Federal* and Judge Sanborne's decisions in the 181st *Federal*, both of which are in point. The case decided by Judge Van de Vanter was where a man claimed that he walked on a railroad track and he could not see because there was smoke and steam being blown across the track in clouds. Judge Van de Vanter said it was then his duty to stop until the wind ceased to blow and there was some rift in the clouds, or some way he could see. Now those are the decisions which Judge Wolverton relies upon in his ruling and decision in that case, although he let the case go to the jury there or upheld the lower court in letting it go to the jury—I forget how it was determined in the lower court—but the evidence plainly showed in that case they had stopped and they had looked and they had listened—they did all of the duties that devolved upon them to discharge before they drove on the railroad track, and then again the evidence was that they got within 20 feet before they could see. With a team of horses stretched out ahead of you 20 feet, at the time those sitting in the wagon box could see the train approaching if they drove out from behind the brush, those horses would be virtually upon the track, and the court seemed to recognize the difference where men are driving a team of horses where they may become suddenly frightened and do them more damage by the passing train than if they took the chance in going ahead—certain discretion is placed in them in that emergency to use their best judgment, espe-

cially where, as in the case decided by Judge Wolverton, the man had his wife with him in the wagon box, and if he were to get out of the wagon and go ahead and desert her there would be the danger of the team running away. There are such things as that to be taken into consideration, which do not and cannot appear in this case.

Counsel has not argued anything about the condition of the road, but as a reason which he has advanced for making an exception in this case counsel has placed reliance on the fact that the chauffeur relied on this signal bell to ring at the track and the fact that he was not familiar with this crossing.

Now, regarding the crossing, the court does not see how reasonable minds could differ on the proposition where it was plainly apparent as he approached the crossing that the road along which he was riding crossed the railroad track at practically right angles and the railroad apparently ran into a bank; that coming down to the road that he could say that he was ignorant of the fact that the track behind that bank would be obscured from his vision when he could glance ahead 1500 feet as he got near the track and be able to see a part of the rails, and then jump at the conclusion that he saw them all, the court does not feel justified that that question should be submitted to the jury, whether a man exercising ordinary care is justified in jumping at such a conclusion.

Regarding the bells ringing on the signal post: Because they were not ringing, as some of the wit-

nesses said, whether he was justified in relying on the defendant in having established such a system of bells. I am unable to see how a warning of that kind differs in any way essentially from the signals that are ordinarily sounded on the cars themselves —the whistle and the bell on the car—it is a warning that the defendant fixes up there to more effectually warn people. There may be cases where gates are established in a city and a man drives up to the railroad crossing and the gate is raised and he sees it raised before his eyes; that may be such an invitation to him to cross the track as to relieve him from the responsibility himself of looking. It is not necessary to decide that in this case, and so it may be where there is a watchman out on a railroad track and a man drives up and he beckons to him to go across—nothing is said—and the party under those circumstances may be justified in relying on that invitation, that assurance that it is safe, where he would not be justified in relying upon the fact that the bell was not ringing or the whistle being sounded, and thereby abandon all necessary precautions or steps for his own protection and safety. This appears to be settled by Judge Van de Vanter's decision in the 130th *Federal*.

Now, regarding the skidding of this car, the court does not see how reasonable minds could differ in concluding that the deceased and the chauffeur approached that railroad crossing in the condition it was, at a dangerous rate of speed. Their own testimony—the plaintiffs' testimony as shown in

rebuttal by an expert that the skidding of the car cannot be calculated at all; that they will skid twice as much one time as another. Then that is a rule that works both ways, and the plaintiffs have not in rebuttal disputed in any way that the wheels burned right into the soil. This is not a case here where there is a greasy pavement or anything of that kind that acted in any extraordinary manner that could not be ordinarily foreseen. There is no justification for the court or jury concluding that anything extraordinary happened; that the man's brake refused to work, or that anything that could not have been ordinarily anticipated in the operation of the car took place. Everybody testifies that the chauffeur made a remarkably quick stop after he started to apply the brake."

MR. HASTINGS: "I suppose the court is holding that the motion of defendant is granted?"

THE COURT: Yes.

MR. HASTINGS: We desire an exception.

THE COURT: The exception is allowed.

(Whereupon the court instructed the jury as follows:)

THE COURT: Gentlemen of the jury, the court has decided in this case as a matter of law that the plaintiffs cannot recover, and now at this time in the case after all the evidence is in it is the duty of the court to instruct you to return a verdict for the defendants. The verdict reads as follows: 'We, the jury in the above entitled cause finds for the defendants, being instructed by the court so

to do.' The court appoints Mr. Noyes as foreman.

Mr. Hastings: In order to preserve the record we take an exception to the court's instruction to the jury.

THE COURT: You have your exception.

(The verdict as signed by the foreman of the jury is read by the court and filed in this case.)

THE COURT: Under the court instructions, gentlemen of the jury, you say one and all that this is your verdict? (The jurors answer in the affirmative.)

THE COURT: It will be received and filed of record as the verdict returned in this case.

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And now in due time plaintiffs submit the foregoing as their proposed bill of exceptions herein, and pray that the same may be settled and allowed.

Dated this 23rd day of April, A. D., 1914.

H. H. A. HASTINGS,

L. B. STEDMAN,

*Attorneys for Plaintiffs.*

The foregoing bill of exceptions is presented in due time and is true and correct, and same may be settled and filed.

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*Attorneys for Defendants.*

And now on this 4th day of June, 1914, this cause coming on to be heard on the application of

the plaintiffs to have their bill of exceptions settled, signed and filed and made of record in said cause, and the plaintiffs appearing by their attorney, H. H. A. Hastings, of the firm of Hastings & Stedman, and the defendant, the Puget Sound Electric Company, appearing by its attorneys, J. B. Howe and Hugh A. Tait, and it appearing to the court that the foregoing bill of exceptions contains all the facts upon which the said cause was tried before the undersigned presiding judge upon the trial of said cause, and all the evidence and testimony offered or received upon the trial of said cause and all objections made by counsel for the respective parties to the receiving or rejection of said evidence and all the rulings of the court thereon and all exceptions taken at the time thereto, the said bill of exceptions is hereby settled, signed and ordered filed and made of record herein, all of which is accordingly done by the undersigned, the Judge before whom the said cause was tried.

EDWARD E. CUSHMAN,  
*Judge of the United States District  
Court of the Western District of  
Washington, Northern Division.*

Service of the within draft of proposed bill of exceptions by delivery of copy thereof to the undersigned is hereby acknowledged this 28th day of April, A. D. 1914.

JAMES B. HOWE,  
HUGH A. TAIT,  
*Attorneys for Defendants.*

Indorsed: Proposed Bill of Exceptions. Filed in the U. S. District Court, Western Dist. of Washington, June 2, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

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*In the District Court of the United States for the Western District of Washington.*

No. 2568.

NELLIE M. RININGER and HELEN DOROTHY RININGER, a Minor, by A. S. Kerry, Her Guardian,

Plaintiffs.

vs.

PUGET SOUND ELECTRIC RAILWAY, a Corporation, and PUGET SOUND TRACTION, LIGHT & POWER COMPANY, a Corporation.

Defendants.

**Verdict.**

We, the jury in the above entitled cause, find for the Defendants, being instructed by the Court so to do.

R. T. NOYES, Foreman.

Indorsed: Verdict. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Feb. 18, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy.

*In the District Court of the United States for the  
Western District of Washington, Northern  
Division.*

No. 2568.

NELLIE M. RININGER and HELEN DOROTHY  
RININGER, a Minor, by A. S. Kerry, Her  
Guardian,

Plaintiffs.

vs.

PUGET SOUND ELECTRIC RAILWAY, a Cor-  
poration, and PUGET SOUND TRACTION,  
LIGHT & POWER COMPANY, a Corporation,  
Defendants.

**Judgment.**

This cause having come on regularly for trial upon the merits on the 11th day of February, 1914, before the Court and a jury of twelve persons duly and regularly sworn and impaneled to try the same; Messrs. H. H. A. Hastings and Livingston B. Stedman appearing as attorneys for the plaintiffs, and Messrs. James B. Howe and Hugh A. Tait appearing as attorneys for the defendants; and oral and documentary evidence having been offered and received in behalf of both the plaintiffs and the defendants; and the evidence having been closed and both parties having rested their respective sides of said cause; and the defendants, by their said attorneys, having at the close of all the evidence moved the Court to instruct the jury to return a verdict against the

plaintiffs and in favor of the defendants, upon the grounds that all the evidence failed to show any negligence on the part of the defendants and affirmatively showed that the plaintiffs' decedent, Edmund M. Rininger, and his servant running and operating the automobile in which said Edmund M. Rininger, deceased, was riding at the time of the accident complained of, were guilty of such contributory negligence as to bar a recovery; and the Court having heard the arguments of respective counsel, and having instructed the jury to return a verdict in favor of the defendants and against the plaintiffs; and the jury, in accordance with such instructions, having thereupon returned such verdict, and having been thereupon discharged from further consideration of the case; and the Court being fully advised in the premises; it is now, upon motion of the said attorneys for the said defendants,

ORDERED, ADJUDGED and DECREED that this action be and the same hereby is dismissed; that the defendant Puget Sound Electric Railway do have and recover of and from the plaintiffs its costs of suit herein, taxed at three hundred fifty-nine and 10-100 dollars (\$359.10); and that the defendant Puget Sound Traction, Light & Power Company do have and recover of and from said plaintiffs its costs of suit herein, taxed at twenty dollars (\$20); and that execution issue therefor.

To all of which the said plaintiffs, by their said attorneys, in open court, duly excepted; which exception is hereby allowed.

Done in open court, this 27th day of February, 1914.

EDWARD E. CUSHMAN,  
Judge.

O. K. as to form but without prejudice to Plaintiff's Motion for New Trial.

H. H. A. HASTINGS.

Indorsed: Judgment. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Feb. 27, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

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*In the District Court of the United States for the Western District of Washington, Northern Division.*

No. 2568.

NELLIE M. RININGER *et al.*,

Plaintiffs,

v.

PUGET SOUND ELECTRIC RAILWAY COMPANY, a Corporation, *et al.*,

Defendants.

**Stipulation Fixing Time to Prepare Bill of Exceptions.**

It is hereby stipulated and agreed by and between attorneys for plaintiffs and attorneys for defendants that the plaintiffs shall have to, and including, Wednesday, April 15, 1914, in which to prepare and serve upon defendants the draft of their proposed bill of exceptions, and that defendants shall have thirty days thereafter in which to pre-

pare and serve upon plaintiffs their proposed amendments to said proposed bill of exceptions.

Dated at Seattle, Washington, this 19th day of February, A. D., 1914.

HASTINGS & STEDMAN,  
Attorneys for Plaintiffs.

JAMES B. HOWE,  
HUGH A. TAIT,  
Attorneys for Defendants.

Indorsed: Stipulation Fixing Time to Prepare Bill of Exceptions. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Feb. 19, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy.

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*In the District Court of the United States for the Western District of Washington, Northern Division.*

No. 2568.

NELLIE M. RINGER, *et al.*,

Plaintiffs.

v.

PUGET SOUND ELECTRIC RAILWAY COMPANY, a Corporation, *et al.*,

Defendants.

**Order Fixing Time to Prepare and File Bill of Exceptions.**

Upon stipulation of plaintiffs and defendants filed herein, it is hereby ORDERED AND ADJUDGED that plaintiffs do have to, and including,

Wednesday, April 15, 1914, in which to prepare and serve upon defendants their proposed bill of exceptions in this cause, and that defendants shall have thirty days after the service of such proposed bill of exceptions in which to prepare and serve their proposed amendments thereto.

Dated at Seattle, Washington, this February 19, 1914.

EDWARD E. CUSHMAN,  
Judge.

O. K. James B. Howe, Hugh A. Tait, Atty.  
for Defts.

Indorsed: Order Fixing Time to Prepare and Serve Bill of Exceptions. Filed in the U. S. Dist. Court, Western Dist. of Washington, Northern Division, Feb. 19, 1914. Frank L. Crosby, Clerk.  
By Ed M. Lakin, Deputy.

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*In the District Court of the United States for the  
Western District of Washington, Northern  
Division.*

No. 2568.

NELLIE M. RININGER *et al.*,

Plaintiffs,

v.

PUGET SOUND ELECTRIC RAILWAY, *et al.*,  
Defendants.

**Stipulation Extending Time to Prepare Bill of Exceptions.**

It is stipulated and agreed by and between

attorneys for plaintiffs and attorneys for defendants that plaintiffs shall have an extension of time until and including May 1, 1914, in which to prepare and serve upon defendants the draft of their proposed bill of exceptions, and that defendants shall have thirty days thereafter in which to prepare and serve upon plaintiffs their proposed amendments to said bill of exceptions.

It is further stipulated and agreed by said parties that all maps, pictures, and photographs introduced in evidence in this cause, and which have been marked as exhibits, being plaintiffs' exhibits 1 to 14, inclusive, and defendants' exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, and N—the same forming a part of the evidence on the trial of the above entitled cause—copies of which cannot be conveniently copied into the bill of exceptions, shall be incorporated by reference thereto as part of the bill of exceptions in the above entitled action, and that wherever said maps, photographs, pictures and exhibits are referred to in said bill of exceptions the original thereof, as introduced and marked in evidence, shall be considered as incorporated into, and as forming a part of, the bill of exceptions, and in the event that this cause is taken to the United States Circuit Court of Appeals for the Ninth Circuit for review, either upon appeal or writ of error, an application shall be made to the presiding judge of the District Court of the United States for the Western District of Washington Northern Division for an order permitting the transferring of such

original maps, photographs, pictures and exhibits to the said United States Circuit Court of Appeals on such terms as to said judge shall seem proper, and upon the final disposition of this cause in said Circuit Court of Appeals such further order may be made with reference to said exhibits as may seem proper to said court.

Dated this 13th day of April, A. D. 1914.

HASTINGS & STEDMAN,  
Attorneys for Plaintiffs.  
JAMES B. HOWE,  
HUGH A. TAIT,  
Attorneys for Defendants.

Indorsed: Stipulation Extending Time to Prepare Bill of Exceptions. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Apr. 15, 1914. Frank L. Crosby, Clerk. By S. E. Leitch, Deputy.

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*In the District Court of the United States for the  
Western District of Washington, Northern  
Division.*

No. 2568.

NELLIE M. RININGER *et al.*,

Plaintiffs,

v.

PUGET SOUND ELECTRIC RAILWAY *et al.*,  
Defendants.

**Order Extending Time to Prepare Bill of Exceptions.**

Upon stipulation of the plaintiffs and defend-

ant filed herein, it is hereby ordered and adjudged that the time for preparing and filing proposed bill of exceptions is hereby extended to, and plaintiffs do hereby have to and including Friday, May 1, 1914, in which to prepare and serve upon defendants their proposed bill of exceptions in this cause, and defendant shall have thirty days after the service of said proposed bill of exceptions in which to prepare and serve its proposed amendments thereto.

It is further ordered by the court that the maps, photographs and pictures received in evidence during the trial of this cause as exhibits, being plaintiffs' exhibits 1 to 14, inclusive, and defendants' exhibits A, B, C, D, E, F, G, H, I, J, K, L, M and N, may be appropriately referred to in said proposed bill of exceptions it being inconvenient to set out copies thereof and in the event this cause is taken to the Circuit Court of Appeals on writ of error or otherwise, the clerk of this court is directed to forward the aforesaid original exhibits to the clerk of said Circuit Court of Appeals as a part of the record in this cause.

Dated at Seattle, Washington, this 14th day of April, A. D., 1914.

EDWARD E. CUSHMAN,  
Judge.

Approved: James B. Howe, Hugh A. Tait,  
Attys. for Defts.

Indorsed: Order extending Time to Prepare  
Bill of Exceptions. Filed in the U. S. District Court,  
Western Dist. of Washington, Northern Division,

Apr. 15, 1914. Frank L. Crosby, Clerk. By S. E. Leitch, Deputy.

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*In the District Court of the United States for the Western District of Washington, Northern Division.*

No. 2568.

NELLIE M. RININGER and HELEN DOROTHY RININGER, a Minor, by A. S. Kerry, Her Guardian,

Plaintiffs.

vs.

PUGET SOUND ELECTRIC RAILWAY, a Corporation, and PUGET SOUND TRACTION, LIGHT & POWER COMPANY, a Corporation,

Defendants.

**Certificate of Clerk U. S. District Court to Exhibits.**

United States of America, Western District of Washington. ss.

I, Frank L. Crosby, Clerk of the District Court of the United States for the Western District of Washington, Northern Division, do hereby certify that the hereto attached sealed package contains Plaintiffs' Exhibits 1 to 14, inclusive, and Defendants' Exhibits A to N, inclusive, introduced and used upon the trial of the foregoing cause, and that the said Exhibits are transmitted to the Circuit Court of Appeals for the Ninth Judicial Circuit, there to be inspected and considered, together with the record on appeal certified of even date herewith;

that the said Exhibits are so certified and transmitted pursuant to the order of the District Court made and entered in said cause April 15, 1914, a copy of which order is attached to any made a part of this certificate and a copy of which said order will also be found on Page 260 of said record on appeal.

In witness whereof I have hereunto set my hand and affixed the seal of said District Court, at Seattle, in said District, this 21st day of July, 1914.

(Seal)

FRANK L. CROSBY, Clerk.

By ED M. LAKIN, Deputy.

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*In the District Court of the United States for the  
Western District of Washington, Northern  
Division.*

No. 2568.

NELLIE M. RININGER and HELEN DOROTHY  
RININGER, a Minor, by A. S. Kerry, Her  
Guardian,

Plaintiffs,

vs.

PUGET SOUND ELECTRIC RAILWAY COM-  
PANY, a Corporation, and PUGET SOUND  
TRACTION, LIGHT & POWER COMPANY,  
a Corporation,

Defendants.

**Petition for Writ of Error.**

And now come Nellie M. Rininger and Helen Dorothy Rininger, a minor, by A. S. Kerry, her guardian, plaintiffs herein, and say:

That on or about the 27th day of February, A. D., 1914, this court entered a judgment herein in favor of the defendant, Puget Sound Electric Railway Company, a corporation, and against these plaintiffs in which judgment and the proceedings had prior thereunto in this cause, certain errors were committed to the prejudice of these plaintiffs, and of which more in detail appears from the assignments of errors which is filed with this petition.

WHEREFORE, these plaintiffs pray that a writ of error may issue in this behalf out of the United States Circuit Court of Appeals, Ninth Circuit, for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the United States Circuit Court of Appeals.

H. H. A. HASTINGS,  
L. B. STEDMAN,  
Attorneys for Plaintiffs.

Indorsed: Petition for Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, June 18, 1914, 2:30 p. m. Frank L. Crosby, Clerk. By E. M. L., Deputy.

*In the District Court of the United States for the Western District of Washington, Northern Division.*

No. 2568.

NELLIE M. RININGER and HELEN DOROTHY RININGER, a Minor, by A. S. Kerry, her Guardian,

Plaintiffs,

vs.

PUGET SOUND ELECTRIC RAILWAY COMPANY, a Corporation, and PUGET SOUND TRACTION, LIGHT & POWER COMPANY, a Corporation,

Defendants.

**Assignment of Errors.**

Now come plaintiffs, Nellie M. Rininger and Helen Dorothy Rininger, a minor, by A. S. Kerry, her guardian, in the above entitled cause, and assign errors in the trial and decision of said Circuit Court in said cause as follows:

1.

Said court erred in granting the motion made by counsel for defendant, Puget Sound Electric Company, upon the conclusion of the testimony introduced upon the trial of this cause, that the jury be instructed to return a verdict in favor of said defendant, Puget Sound Electric Railway Company, a corporation, and against these plaintiffs.

2.

Said court erred in not submitting for determining the issues between the parties to said jury.

## 3.

Said court erred in ruling that, as a matter of law, the deceased, Dr. Edmund M. Rininger, and Kent Brodnix, the chauffeur driving the automobile in which deceased was riding when he was killed, were guilty of contributory negligence in not stopping the automobile and looking and listening to ascertain if a car were approaching the highway crossing at Riverton before they attempted to drive across defendants' railway tracks at that point.

## 4.

The court erred in ruling that, as a matter of law, the evidence showed that said Dr. Edmund M. Rininger and Kent Brodnix, his chauffeur, who was driving the automobile in which they were riding, approached the tracks of the defendant, Puget Sound Electric Railway Company, a corporation, at Riverton, and attempted to cross such tracks at an unreasonable rate of speed.

## 5.

The court erred in ruling that all reasonable minds could not differ in concluding that Dr. Edmund M. Rininger and his chauffeur, Kent Brodnix, approached and attempted to cross the railroad tracks of the Puget Sound Electric Railway Company over the highway at Riverton at a dangerous rate of speed, and holding that the court was not justified in submitting to the jury the question whether or not said Dr. Edmund M. Rininger and his chauffeur, Kent Brodnix, were exercising ordi-

nary care in attempting to drive across said crossing at said time.

6.

The court erred in ruling that all reasonable minds could not differ in concluding that deceased, Dr. Edmund M. Rininger, and his chauffeur, Kent Brodnix, approached the railway crossing of the defendant, Puget Sound Electric Railway Company, at Riverton, in the condition that it was then in, at a dangerous rate of speed.

7.

The court erred at the close of the testimony in directing the jury to return a verdict in this cause in favor of the defendant, Puget Sound Electric Railway Company, and against plaintiffs in this action.

8.

The court erred in entering a judgment in this cause in favor of Puget Sound Electric Railway Company, a corporation, and against these plaintiffs.

9.

The court erred in not sustaining the objection of the plaintiffs to the following question propounded to plaintiff, Nellie M. Rininger, to-wit: "I wish you would state what the estate amounted to which you and his daughter received." Which objection was made on the ground that it was irrelevant, immaterial and incompetent, and overruled by the court, and exception allowed. (See Bill of Ex., pg. 137.) The substance of the answer being that the plain-

tiffs received Sixty Thousand Dollars in notes from the sale of some property and that Nellie M. Rininger had received in addition Five Thousand Four Hundred and Thirty-seven Dollars (\$5437.00), besides the book accounts still on the books of the deceased, amounting to something like \$30,000.

## 10.

The court erred in refusing the following question to be answered by the witness, Kent Brodnix: "You may state, if you know, what would be a reasonable rate of speed to approach a crossing similar to this, with an automobile of the weight of this automobile, with the number of passengers in it that you had at that time." This was objected to and objection sustained. It was expected to prove by the witness that he was not approaching this crossing at that time at an unreasonable rate of speed. (See Bill of Ex., pg. 20.)

## 12.

The court erred in refusing the following question to be answered by the witness Albro Gardner, Jr.: "Mr. Gardner, from your experience and knowledge as a civil engineer, you may state whether or not this is a dangerous crossing." There was an objection to this question, which was sustained and exception noted. It was expected to prove by this witness that from his knowledge as a civil engineer, the physical conditions surrounding this crossing made it dangerous from an engineering standpoint. (See Bill of Ex., pg. 15.)

13.

That the court erred in refusing the following question to be answered by the witness H. D. Hanford: "Do you know whether or not, Mr. Hanford, from your knowledge as an engineer and also the experience that you had in laying out this track, whether or not the crossing there could have been constructed so as to have eliminated, or at least greatly reduced, the danger of this highway crossing?" to which question there was an objection by defendant, which was sustained and exception noted. It was expected to be proven by the answer to this question that the witness who had testified that he was the engineer in charge of the laying out and construction of the tracks of the Puget Sound Electric Railway Company at this point, would testify that there was another and reasonable method of laying out and constructing said tracks at said point, at a reasonable expense, that would have greatly reduced, if not eliminated, the dangerous character of this crossing, and that same was discussed by him with the executive officers of the company so constructing said tracks. (See Bill of Ex., pg. 56.)

14.

The court erred in not sustaining the objection of the plaintiffs to the following question propounded to the witness Anna M. Gookstetter: "And now, Miss Gookstetter, you have stated that in 1910 you actually collected something over \$36,000. What were the expenses for that year in connection with

the Doctor's business?" The objection was based on the ground that the question was immaterial, and was overruled, and an exception allowed, and the answer thereto was: "The expenses from January 1, 1910, to January 1, 1911, were \$13,536.71." (See Bill of Ex., 53.)

WHEREFORE, plaintiffs pray that the judgment may be reversed and a new trial granted.

H. H. A. HASTINGS,  
L. B. STEDMAN,  
Attorneys for Plaintiffs.

Indorsed: Assignment of Errors. Filed in the U. S. District Court, Western Dist. of Washington, June 18, 1914, 1:30 p. m. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

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*In the District Court of the United States for the  
Western District of Washington, Northern  
Division.*

No. 2568.

NELLIE M. RININGER and HELEN DOROTHY  
RININGER, a Minor, by A. S. Kerry, her  
Guardian,

Plaintiffs,

vs.

PUGET SOUND ELECTRIC RAILWAY COMPANY, a Corporation, and PUGET SOUND TRACTION, LIGHT & POWER COMPANY, a Corporation,

Defendants.

**Order Allowing Writ of Error.**

This 18th day of June, 1914, come plaintiffs by their attorneys, and file herein and present to the court their petition praying for the allowance of a writ of error, an assignment of errors intended to be urged by them, praying also that a transcript of the record, proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judician Circuit, and that such other and further proceedings may be had as may be proper in the premises. On consideration whereof the court does allow the writ of error upon plaintiffs giving a bond according to law in the sum of One Thousand Dollars (\$1000.-00), which will operate as a supersedeas bond and a bond for costs.

EDWARD E. CUSHMAN,  
Judge.

Order Allowing Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, June 18, 1914, 2:30 p. m. Frank L. Crosby, Clerk.  
By E. M. L., Deputy.

*In the District Court of the United States for the  
Western District of Washington, Northern  
Division.*

No. 2568.

NELLIE M. RININGER and HELEN DOROTHY  
RININGER, a Minor, by A. S. Kerry, her  
Guardian,

Plaintiffs,

vs.

PUGET SOUND ELECTRIC RAILWAY COM-  
PANY, a Corporation, and PUGET SOUND  
TRACTION, LIGHT & POWER COMPANY,  
a Corporation,

Defendants.

**Bond.**

KNOW ALL MEN BY THESE PRESENTS,  
That we, Nellie M. Rininger, as principal, and the  
American Surety Company of New York, a cor-  
poration, as surety, for any on behalf of said Nel-  
lie M. Rininger, and said American Surety Com-  
pany of New York, both as surety and as an under-  
taking for and on behalf of Helen Dorothy Rin-  
inger, a minor, by A. S. Kerry, her guardian, and  
on behalf of A. S. Kerry, as guardian for said  
Helen Dorothy Rininger, a minor, are held and  
firmly bound unto the Puget Sound Electric Rail-  
way Company, a corporation, in the full sum of One  
Thousand Dollars, to be paid to said Puget Sound  
Electric Railway Company, a corporation, its attor-  
neys, successors or assigns, to which payment well

and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally by these presents.

Sealed with our seals and dated this 18th day of June, A. D. 1914.

WHEREAS, lately at the District Court of the United States for the Western District of Washington, Northern Division, in a suit pending in said court between Nellie M. Rininger and Helen Dorothy Rininger, a minor, by A. S. Kerry, her guardian, as plaintiffs, and Puget Sound Electric Railway Company, a corporation, as defendant, a judgment was rendered against said plaintiffs, Nellie M. Rininger and Helen Dorothy Rininger, a minor, by A. S. Kerry, her guardian, and in favor of said Puget Sound Electric Railway Company, a corporation, and said Nellie M. Rininger and said Helen Dorothy Rininger, a minor, by A. S. Kerry, her guardian, having obtained from said court a writ of error to reverse the judgment in the aforesaid suit, and a citation directed to said Puget Sound Electric Railway Company citing and admonishing it to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California;

Now, the condition of the above obligation is such that if said plaintiffs, Nellie M. Rininger and Helen Dorothy Rininger, a minor, by A. S. Kerry, her guardian, shall prosecute said writ of error to effect, and answer all damages and costs if they

shall fail to make their plea good, then the above obligation to be void, but else to remain in full force and effect.

NELLIE M. RININGER (Seal).

American Surety Company of New York.

By Edward J. Lyons, Resident Vice President.

(Seal) S. H. Melrose, Resident Assistant Secretary.

Acknowledged before me the day and year first above written.

(Seal)

H. H. A. HASTINGS,

Notary Public in and for the State of  
of Washington, residing at Seattle.

Approved by me:

EDWARD E. CUSHMAN,

Judge.

Indorsed: Plaintiffs' Bond. Filed in the U. S. District Court, Western Dist. of Washington, June 18, 1914, 2:30 p. m. Frank L. Crosby, Clerk. By E. M. L., Deputy.

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*In the United States Circuit Court of Appeals for  
the Ninth Circuit.*

### **Writ of Error.**

United States of America, Ninth Judicial Circuit. ss.

The President of the United States of America to the Honorable Judges of the District Court of the United States for the Western District of Washington, Northern Division, GREETING:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is

in said Circuit Court before you, or some of you, between Nellie M. Rininger and Helen Dorothy Rininger, a minor, by A. S. Kerry, her guardian, plaintiffs in error, and Puget Sound Electric Railway Company, a corporation, defendant in error, a manifest error hath happened to the great damage of said Nellie M. Rininger and said Helen Dorothy Rininger, a minor, by A. S. Kerry, her guardian, plaintiffs in error, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, State of California, in said circuit, within thirty days from the date hereof, in said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable E. D. White, Chief Justice of the United States, this 18th day of June, A. D. 1914.

Attest:

FRANK L. CROSBY,

Clerk of the District Court of the United States for the Western District of Washington, Northern Division.

By \_\_\_\_\_

Deputy.

Allowed by

(Seal)

EDWARD E. CUSHMAN,

Judge.

Indorsed: Original. No. 2568. In the District Court of the United States for the Western District of Washington, Northern Division. Nellie M. Rininger, et al., vs. Puget Sound Electric Railway Company. Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, June 18, 1914, 2:30 p. m. Frank L. Crosby, Clerk. By E. M. L., Deputy.

### Citation.

United States of America. ss.

The President of the United States, to the Puget Sound Electric Railway Company, a corporation, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the

City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the clerk's office of the United States District Court for the Western District of Washington, Northern Division, wherein Nellie M. Rininger and Helen Dorothy Rininger, a minor, by A. S. Kerry, her guardian, are plaintiffs in error, and you are defendant in error, to show cause if any there by why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable E. D. White, Chief Justice of the United States, this 18th day of June, A. D. 1914.

EDWARD E. CUSHMAN,  
United States District Judge.

Indorsed: Original. No. 2568. In the District Court of the United States for the Western District of Washington, Northern Division. Nellie M. Rininger, et al., v. Puget Sound Electric Railway Co. Citation. Filed in the U. S. District Court, Western Dist. of Washington, June 18, 1914, 2:30 p. m. Frank L. Crosby, Clerk. By E. M. L., Deputy. Hastings & Stedman, Attorneys for Plaintiffs. No. 60-65 Haller Building, Seattle, Washington. At which place service of all subsequent papers except writs and process may be made.

*In the District Court of the United States for the  
Western District of Washington, Northern  
Division.*

No. 2568.

NELLIE M. RININGER and HELEN DOROTHY  
RININGER, a Minor, by A. S. Kerry, her  
Guardian,

Plaintiffs,

vs.

PUGET SOUND ELECTRIC RAILWAY COM-  
PANY,

Defendant.

**Acceptance of Service.**

We, the undersigned, attorneys for defendant, Puget Sound Electric Railway Company, a corporation, do hereby admit service and receipt of a copy of the petition for writ of error, assignment of errors, order allowing petition for writ of error, bond on writ of error, writ of error, and citation on writ of error, and do hereby waive any other or further service of said matters.

Seattle, Washington, June 19, 1914.

JAMES B. HOWE,

HUGH A. TAIT,

Attorneys for Puget Sound Elec-  
tric Railway Company.

Indorsed: Acceptance of Service of Petition  
for Writ of Error, Assignment of Errors, Order  
Allowing Petition for Writ of Error, Bond on Writ  
of Error, Writ of Error and Citation on Writ of

Error. Filed in the U. S. District Court, Western Dist. of Washington, June 23, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy.

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*In the District Court of the United States for the Western District of Washington, Northern Division.*

No. 2568.

NELLIE M. RININGER, et al.,

Plaintiffs,

vs.

PUGET SOUND ELECTRIC RAILWAY, et al.,  
Defendants.

**Order Extending Time to File Transcript.**

Now on this 26th day of June, 1914, upon motion of attorney for plaintiffs in error, and for sufficient cause appearing, it is ordered that the time within which the clerk of this court may prepare, certify and transmit to the United States Circuit Court of Appeals the transcript of the record in this cause be, and the same is hereby, extended to and including 31st day of July, 1914.

EDWARD E. CUSHMAN,  
District Judge.

Indorsed: Order Extending Time to File Transcript. Filed in the U. S. District Court, Western Dist. of Washington, June 26, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy.

*In the District Court of the United States for the  
Western District of Washington, Northern  
Division.*

No. 2568.

NELLIE M. RININGER and HELEN DOROTHY  
RININGER, a Minor, by A. S. Kerry, her  
Guardian,

Plaintiffs,

vs.

PUGET SOUND ELECTRIC RAILWAY COM-  
PANY, a Corporation,

Defendants.

**Stipulation Relating to the Contents of Printed Record.**

It is hereby stipulated by and between counsel for plaintiff and plaintiff in error and counsel for defendant in error that there shall be embraced in the printed records the following matters:

Amended complaint;  
Separate answer of the Puget Sound Electric Railway Co.;  
Reply of plaintiffs thereto;  
Empaneling of the jury;  
Bill of exceptions;  
Verdict;  
Judgment of the court;  
First stipulation extending time for filing and settling proposed bill of exceptions;  
Order extending time for filing bill of exceptions;

Second stipulation extending time for filing bill of exceptions;

Second order extending time for filing bill of exceptions and directing clerk to transmit original exhibits to the Circuit Court of Appeals;

Petition for writ of error;

Assignment of error;

Allowance of writ of error;

Bond and approval;

Writ of error;

Citation in error;

Acceptance of service of Writ of Error, Citation, Assignment of Errors, Petition for Writ of Error; Order Allowing Writ of Error.

Order allowing Writ of Error.

This stipulation;

Clerk's certificate.

Dated at Seattle, Washington, this June 15th, 1914.

H. H. A. HASTINGS and  
L. B. STEDMAN,  
Attorneys for Plaintiffs.

J. B. HOWE,  
HUGH A. TAIT,

Attorneys for Defendant.

Indorsed: Stipulation Relating to the Contents of the Printed Record. Filed in the U. S. District Court, Western Dist. of Washington, June 23, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy.

*In the District Court of the United States for the  
Western District of Washington, Northern  
Division.*

No. 2568.

NELLIE M. RININGER and HELEN DOROTHY  
RININGER, a Minor, by A. S. Kerry, her  
Guardian,

Plaintiffs,

vs.

PUGET SOUND ELECTRIC RAILWAY, a Cor-  
poration,

Defendants.

**Certificate of Clerk U. S. District Court to Transcript of  
Record, Etc.**

United States of America, Western District of  
Washington.—ss.

I, Frank L. Crosby, Clerk of the United States  
District Court for the Western District of Washing-  
ton, do hereby certify the foregoing printed pages,  
numbered from 1 to 287, inclusive, to be a full,  
true, correct and complete copy of so much of the  
record, papers and other proceedings in the above  
and foregoing entitled cause as are necessary to the  
hearing of said cause on Writ of Error therein in  
the United States Circuit Court of Appeals for the  
Ninth Circuit, and as is stipulated for by counsel of  
record herein, as the same remain of record and on  
file in the office of the Clerk of said District Court  
and that the same constitute the record on return to  
said Writ of Error herein from the judgment of said

United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the Plaintiffs in Error for the preparation and certification of the typewritten transcript of record issued to the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled cause, to-wit:

Clerk's fee (Sec. 828 R. S. U. S., as

Amended by Sec. 6, Act of March 2, 1905) for making record, certificate or return—710 folios at 30c..... \$213.00

Certificate of Clerk to transcript of record—

3 folios at 30c..... .90

Seal to said Certificate..... .40

Certificate of Clerk to Original Exhibits—

3 folios at 30c..... .90

Seal to said Certificate..... .40

Statement of cost of printing said transcript of record, collected and paid..... 175.00

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\$390.60

I hereby certify that the above cost for preparing, certifying and printing said record amounting to \$390.60, has been paid me by Messrs. Hastings & Stedman, Attorneys for Plaintiffs in Error.

I further certify that I hereby attach and herewith transmit the original Writ of Error and orig-

inal Citation issued in this cause.

IN WITNESS WHEREOF I have hereto set my hand and affixed the seal of said District Court at Seattle, in said District, this 21st day of July, 1914.

(SEAL)

FRANK L. CROSBY,

Clerk.

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*In the United States Circuit Court of Appeals for the Ninth Circuit.*

“ORIGINAL.”

**Writ of Error.**

United States of America, Ninth Judicial Circuit.—ss.

The President of the United States of America to the Honorable Judges of the District Court of the United States for the Western District of Washington, Northern Division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in said Circuit Court before you, or some of you, between Nellie M. Rininger and Helen Dorothy Rininger, a minor, by A. S. Kerry, her guardian, Plaintiffs in Error, and Puget Sound Electric Railway Company, a corporation, Defendant in Error, a manifest error hath happened to the great damage of said Nellie M. Rininger and said Helen Dorothy Rininger, a minor, by A. S. Kerry, her guardian, Plaintiffs in Error, as by their complaint appears, we, being willing that error, if any hath been, should

be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this Writ, so that you have the same at the City of San Francisco, State of California, in said Circuit, within thirty days from the date hereof, in said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable E. D. White, Chief Justice of the United States, this 18th day of June, A. D. 1914.

Attest: FRANK L. CROSBY,

Clerk of the District Court of the  
United States for the Western  
District of Washington, North-  
ern Division.

By \_\_\_\_\_

Deput.

Allowed By:

(SEAL) EDWARD E. CUSHMAN,  
Judge.

Indorsed: (Original) No. 2568. In the Dis-

trict Court of the United States for the Western District of Washington, Northern Division. *Nellie M. Rininger, et al., vs. Puget Sound Electric Railway Company, Writ of Error.* Filed in the U. S. District Court, Western Dist. of Washington, June 18, 1914, 2:30 p. m. Frank L. Crosby, Clerk. By E. M. L., Deputy. Hastings & Stedman, Attorneys for Plaintiffs. No. 60-65 Haller Building, Seattle, Washington. At which place service of all subsequent papers except writs and process may be made.

**“ORIGINAL.”**

**Citation.**

United States of America.—ss.

The President of the United States, to the Puget Sound Electric Railway Company, a corporation, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a Writ of Error duly issued and now on file in the Clerk's office of the United States District Court for the Western District of Washington, Northern Division, wherein Nellie M. Rininger and Helen Dorothy Rininger, a minor, by A. S. Kerry, her guardian, are Plaintiffs in Error, and you are Defendant in Error, to show cause if any there be why the judgment rendered against the said Plaintiffs in Error, as in the said Writ of Error mentioned, should not be cor-

rected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable E. D. White, Chief Justice of the United States, this 18th day of June, A. D. 1914.

EDWARD E. CUSHMAN,  
United States District Judge.

Indorsed: (Original) No. 2568. In the District Court of the United States for the Western District of Washington, Northern Division. Nellie M. Rininger, et al., v. Puget Sound Electric Railway Co. Citation. Filed in the U. S. District Court, Western Dist. of Washington, June 18, 1914. 2:30 p. m. Frank L. Crosby, Clerk. By E. M. L., Deputy. Hastings & Stedman, Attorneys for Plaintiffs. No. 60-65 Haller Building, Seattle, Washington. At which place service of all subsequent papers except writs and process may be made.

